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ABSTRACT

An investigation was made of the Immigration Reform and Control Act (IRCA) of 1986, which requires employers to verify employment eligibility of workers and imposes civil and criminal penalties against employers who knowingly hire unauthorized workers. The study reviewed federal agency implementation of IRCA, reviewed discrimination complaints filed with federal agencies and data from groups representing aliens, and used additional methods to obtain data on IRCA's effects. The other methods included a statistically valid survey of more than 9,400 employers and a hiring audit in which pairs of persons (one a "foreign-sounding, foreign-appearing" Hispanic and one an Anglo with no foreign accent) who matched closely on job qualifications applied for jobs with 360 employers in 2 cities. The study found that the IRCA: (1) has apparently reduced illegal immigration and is not an unnecessary burden on employers; (2) has generally been carried out satisfactorily by the Immigration and Naturalization Service and the Department of Labor; and (3) has not been used as a vehicle to launch frivolous complaints against employers. The study also found that widespread discrimination was a result of the IRCA: many employers discriminated because the law's verification system does not provide a simple or reliable method to verify job applicants' eligibility to work. The discrimination would be reduced if employers were provided with more education on the law's requirements and a simpler, more reliable verification system. (The document includes 22 tables, 20 figures, and copies of the questionnaires.) (CML)

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GAO

United States General Accounting Office
Report to the Congress

March 1990

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IMMIGRATION REFORM

Employer Sanctions and the Question of Discrimination

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United States
General Accounting Office
Washington, D.C. 20548

Comptroller General
of the United States

B-125051

March 29, 1990

The President of the Senate and the
Speaker of the House of Representatives

This is the third and final annual GAO report required by Section 101(a) of the Immigration Reform and Control Act of 1986. The act prohibits employers from knowingly hiring unauthorized workers. Noncompliance can result in sanctions to the employer.

The act requires us to review the implementation and enforcement of the employer verification and sanctions provisions of the law for the purpose of determining if such provisions (1) have been carried out satisfactorily, (2) have caused a widespread pattern of discrimination against U.S. citizens or other eligible workers, and (3) have caused an unnecessary regulatory burden on employers.

We are sending copies of this report to the Attorney General; the Secretary, Department of Labor; the Secretary, Department of Health and Human Services; the Chairman, Equal Employment Opportunity Commission; the Chairman, U.S. Commission on Civil Rights; the Director, Office of Management and Budget; and other interested parties.

This report was prepared under the overall direction of Richard L. Fogel, Assistant Comptroller General, General Government Programs. Alan M. Stapleton was the Project Director. Other major contributors are listed in appendix VII.

Charles A. Bowsher

Charles A. Bowsher
Comptroller General
of the United States

Executive Summary

Purpose

The Immigration Reform and Control Act of 1986 (IRCA) requires employers to verify the employment eligibility of workers. It imposes civil and criminal penalties (sanctions) against employers who knowingly hire unauthorized workers. (See p. 16.) The law also requires GAO to issue three annual reports to Congress for the purpose of determining whether IRCA's employer verification and sanctions section (referred to hereafter as the sanctions section) has (1) created an unnecessary burden on employers, (2) been carried out satisfactorily, and (3) resulted in a pattern of discrimination against eligible workers. (See p. 23.) GAO is also to determine whether frivolous discrimination complaints have been filed under IRCA's antidiscrimination section to harass employers. This is the third GAO report.

Background

During the 1970s and 1980s, Congress became increasingly concerned about the escalating rate of illegal immigration. After intense debate, Congress passed IRCA, which enlists the Nation's employers in the battle to regain control of our borders.

The law requires all employers to complete an Employment Eligibility Verification Form for each new employee. New employees can use any of 17 different documents to establish their eligibility to work (e.g., Social Security card). Ten of these documents are issued by the Immigration and Naturalization Service (INS). The law authorizes INS and Department of Labor officials to inspect employers' verification forms. (See p. 17.)

Congress was concerned that the law's system of verification and sanctions would cause employers to discriminate against "foreign-appearing" U.S. citizens and legal aliens. As a result, the law prohibits employers with four or more employees from discriminating on the basis of a person's national origin or citizenship status. (See p. 19.)

IRCA provides an option for Congress to consider repealing the sanctions and antidiscrimination sections of the law if GAO determines in its third report that "a widespread pattern of discrimination has resulted against" eligible workers seeking employment "solely from the implementation of" that section. While the law does not define "widespread pattern of discrimination," the legislative history indicates that it was intended to mean "a serious pattern of discrimination" and more than "just a few isolated cases of discrimination." According to the legislative history, the reference to discrimination resulting "solely" from implementation of the sanctions section was designed to isolate "new" or "increased" discrimination attributable to IRCA from discrimination that would have occurred irrespective of IRCA. (See p. 23.)

Congress has mandated that GAO determine whether widespread discrimination has resulted solely from the law. This is difficult to prove or disprove. First, there is an absence of a sensitive pre-IRCA measure of discrimination. Further, there was no comparison group not subject to IRCA. Recognizing these limitations, GAO used the best available evidence to meet its congressional mandate.

IRCA also provides an option for Congress to repeal its antidiscrimination section if GAO determines that the section has been a vehicle for frivolous complaints against employers. (See p. 36.)

For this third report, GAO (1) reviewed federal agency implementation of IRCA, (2) reviewed discrimination complaints filed with federal agencies and data from groups representing aliens, and (3) used additional methods to obtain data on IRCA's effects. These methodologies included a statistically valid survey of over 9,400 of the Nation's employers, which projects to a universe of about 4.6 million employers. (See p. 27.) In collaboration with the Urban Institute, GAO also did a "hiring audit" in which pairs of persons matched closely on job qualifications applied for jobs with 360 employers in two cities. One member of each pair was a "foreign-appearing, foreign-sounding" Hispanic and the other was an Anglo with no foreign accent. (See p. 29.)

Results in Brief

GAO found that the law

- has apparently reduced illegal immigration and is not an unnecessary burden on employers,
- has generally been carried out satisfactorily by INS and Labor, and
- has not been used as a vehicle to launch frivolous complaints against employers.

GAO also found that there was widespread discrimination. But was there discrimination as a result of IRCA? That is the key question Congress directed GAO to answer. GAO's answer is yes.

Making such a link is exceedingly difficult. GAO used various techniques and approaches to try to measure the discrimination and determine the link. None of these techniques or approaches was or could be ideal. Some may disagree with GAO's conclusion. But, on the basis of employers' responses to key questions GAO asked about their hiring behavior and how it related to provisions of IRCA, GAO's judgment is that a substantial amount of the discrimination did occur as a result of IRCA.

The decision Congress must now make is difficult because of IRCA's mixed results. There has been discrimination. An estimated 461,000 employers, or 10 percent of all those surveyed, reported national origin discrimination as a result of the law, but 90 percent did not; thus, IRCA-related discrimination is serious but not pervasive. And the sanctions provision at this time appears to have slowed illegal immigration to the United States.

GAO believes many employers discriminated because the law's verification system does not provide a simple or reliable method to verify job applicants' eligibility to work. Thus, it is likely that the widespread pattern of discrimination GAO found could be reduced if employers were provided with more education on the law's requirements and a simpler and more reliable verification system.

In the final analysis, GAO sees three options for Congress: (1) leaving IRCA as is for the present, (2) repealing the sanctions and antidiscrimination provisions, or (3) amending IRCA's verification system to reduce the law's discriminatory effects.

Principal Findings

Illegal Immigration Being Reduced; Law Not an Unnecessary Burden

GAO's criteria in determining if the implementation of the sanctions section has caused an "unnecessary" regulatory burden on employers was based on whether the law's objectives were realized. GAO found that the burden of applying the law's verification requirements was not "unnecessary" because the law has apparently reduced illegal immigration and employment, as Congress envisioned. While not conclusive, nearly all available data suggests the law's objectives have been at least partially realized. (See p. 102.) For example,

- a statistical study by the Urban Institute concluded that the law had slowed illegal immigration,
- two surveys in Mexico found that people believe it is now harder to find work in the United States, and

- about 16 percent of aliens apprehended during employer sanctions investigations during August and September 1989 reported difficulty finding a job because of the law's verification system.

INS and Labor Have Met Their Minimum Responsibilities Under the Law

GAO decided that the sanctions section would have been carried out "satisfactorily" if the government developed plans and policies and implemented procedures that could reasonably be expected to (1) educate employers about their requirements under the law and (2) identify and fine violators. GAO found that INS and Labor have generally fulfilled their responsibilities under this definition of "satisfactorily." (See p. 87.) However, GAO also found that INS could improve its methods for determining employer compliance with the law's requirements. (See p. 92.)

As of September 1989, INS had issued notices of intent to fine employers for about 3,500 violations for knowingly hiring or continuing to employ unauthorized aliens. There were also about 36,000 violations for not completing the verification forms. The total fines assessed were about $17 million. (See p. 88.) GAO's review of about 300 randomly selected employer sanctions case files showed that INS field offices had correctly carried out the Commissioner's policy on employer fines. (See p. 89.) Between September 1987 and September 1989, Labor officials completed over 77,000 inspections of employers' verification forms. (See p. 91.)

Following the government's extensive efforts to educate employers, including direct contact with over 2 million employers, GAO estimates that 3.8 million (83 percent) of the 4.6 million employers in the survey population were aware of the law. Of the 2.4 million employers who were aware of the law and hired at least one employee during 1988, GAO estimates that 1.6 million (65 percent) reported being in full compliance with the verification requirement. (See p. 98.)

No Evidence of Frivolous Complaints

GAO's review of the Office of Special Counsel and the Equal Employment Opportunity Commission's discrimination data found no evidence of frivolous IRCA discrimination complaints to harass employers. (See p. 112.)

Employers Reported Discriminatory Practices Resulting From the Law

GAO's survey results indicate that national origin discrimination resulting from IRCA, while not pervasive, does exist at levels that amount to more than "just a few isolated cases" and constitutes "a serious pattern of discrimination." GAO estimates that 461,000 (or 10 percent) of the 4.6

million employers in the survey population nationwide began one or more practices that represent national origin discrimination. (See p. 38.) The survey responses do not reveal whether the persons affected by the discrimination were eligible to work. However, given that these employers hired an estimated 2.9 million employees in 1988, GAO believes it is reasonable to assume that many eligible workers were affected.

An estimated 227,000 employers reported that they began a practice, as a result of IRCA, not to hire job applicants whose foreign appearance or accent led them to suspect that they might be unauthorized aliens. Also, contrary to IRCA, an estimated 346,000 employers said that they applied IRCA's verification system only to persons who had a "foreign" appearance or accent. Some employers began both practices. (See p. 41.)

Employers reported that they engaged in practices which under the law would be classified as discriminatory verification and hiring practices. They were in a variety of industries and areas of the Nation and included firms of various sizes. The levels of discrimination ranged by geographical location from 3 to 16 percent and were higher in areas having high Hispanic and Asian populations.

These employer responses specifically related the discriminatory hiring and verification practices to IRCA. Therefore, they represent "new" national origin discrimination that would not have occurred without IRCA. There is no evidence that would lead GAO to believe that employers who said they discriminated as a result of IRCA did not. But even if some employers did not report accurately, the remaining group would be substantial.

Since these data meet the criteria in the law and its legislative history, GAO concluded that the national origin discriminatory practices reported do establish a widespread pattern of discrimination. On the basis of the information GAO has, GAO determined that it is more reasonable to conclude that a substantial amount of these discriminatory practices resulted from IRCA rather than not. (See p. 37.)

Finally, GAO's hiring audit of 360 employers in Chicago, Illinois, and San Diego, California, showed that the "foreign-appearing, foreign-sounding" Hispanic member of the matched pairs was three times more likely to encounter unfavorable treatment than the Anglo non-foreign-appearing member of the pairs. For example, the Anglo members received 52 percent more job offers than the Hispanics. These results, taken together with the survey responses, show a serious problem of national origin discrimination that GAO believes IRCA exacerbated. (See p. 49.)

Employers Reported Other Forms of Discriminatory Practices

While GAO's statutory determination is limited to national origin discrimination that can be linked directly to IRCA's sanctions section, GAO's survey results indicate that the law also resulted in citizenship discrimination.

GAO estimates that an additional 430,000 employers (9 percent) said that because of the law they began hiring only persons born in the United States or not hiring persons with temporary work eligibility documents. These practices are illegal and can harm people, particularly those of Hispanic and Asian origin. (See p. 38.)

Adding these employers to those who began national origin discrimination, GAO estimates that 891,000 (19 percent) of the 4.6 million employers in the survey population nationwide began one or more discriminatory practices as a result of the law.

Employers Want Improved Verification System

About 78 percent of employers said they wanted a simpler or better verification system. The portion of employers who wanted these changes was 16 to 19 percent greater among those who reported discriminatory practices than among those who did not report discriminatory practices. GAO believes the responses tend to reflect employers' confusion and uncertainty about the law's verification system and that a simpler system that relies on fewer documents could reduce discrimination. (See p. 62.)

Contributing to the uncertainty that arises from the variety of documents in use is the prevalence of counterfeit documents. INS apprehensions of unauthorized aliens show they commonly have counterfeit or fraudulently obtained documents—Social Security cards or one of the various INS alien work eligibility cards. (See p. 66.)

By the mid-1990s, INS plans to (1) reduce from 10 to 2 the number of work eligibility cards it issues and to make these 2 cards more difficult to counterfeit and (2) replace over 20 million old INS cards with the new ones. However, this schedule depends on additional funding and personnel. Unless this process is expedited, little will be accomplished in the near term to reduce employer confusion and uncertainty about aliens' work eligibility status. (See p. 67.)

Improved Verification System Needed If Sanctions Are Retained

GAO identified three possible reasons why employers discriminated: (1) lack of understanding of the law's major provisions, (2) confusion and uncertainty about how to determine eligibility, and (3) the prevalence of counterfeit and fraudulent documents that contributed to employer uncertainty over how to verify eligibility. (See p. 60.)

GAO's work suggests that the widespread pattern of discrimination it found could be effectively reduced by (1) increasing employer understanding through effective education efforts, (2) reducing the number of work eligibility documents, (3) making the documents harder to counterfeit, thereby reducing document fraud, and (4) applying the new documents to all members of the workforce.

Such actions would make it easier for employers to comply with the law. They would relieve employer concerns about counterfeit documents. And they would reduce employer confusion over the many documents which can now be used for verifying work eligibility.

Congress anticipated that the verification system might need improvement. Section 101(a)(1) of IRCA establishes procedures governing proposals to improve the employment verification system. The section specifies that improvements to the verification system proposed by the President should provide for reliable determinations of employment eligibility and identity, be counterfeit-resistant, protect individual privacy, and not be used for law enforcement purposes unrelated to IRCA.

Reducing the number of eligibility documents will raise many concerns—ranging from civil liberty issues to cost and logistic issues. Should Congress opt for this solution, it will have to consider carefully the tradeoffs between the goal of assuring that jobs are reserved for citizens and legal aliens versus the goal of reducing discrimination in the process. Both objectives are important. (See p. 73.)

Matters for Congressional Consideration

The discrimination GAO found is serious and requires the immediate attention of both Congress and the Administration. There are two ways to proceed.

One way is to rely upon the President to propose verification system changes he deems necessary, pursuant to the provisions of section 101(a)(1) of IRCA. This course would leave the initiative for action up to the executive branch. However, the necessary changes would require extensive debate and discussion between the legislative and executive branches before a final decision could be made on the solution.

The second alternative is for Congress to initiate discussions with the executive branch and interested parties on solutions to the IRCA verification problem that should be considered in light of GAO's findings. Given the lengthy time frames set by section 101(a)(1), this alternative could expedite the process.

In the final analysis, Congress has the following options: (1) leaving the sanctions and antidiscrimination provisions of the law as is for the present time, (2) repealing these provisions, or (3) leaving the current provisions in place and enacting legislation to amend IRCA's verification system to reduce the extent of discrimination resulting from IRCA.

The exact nature of the solution will emerge only after the debate that is inherent in the democratic process.

Should Congress decide to retain sanctions and improve the current verification system, three principles for improving the system while reducing discrimination need to be kept in mind. These are: (1) reducing the number of work eligibility documents, (2) making the documents more counterfeit-resistant and less vulnerable to being used fraudulently, and (3) applying any reduced work eligibility documents to all members of the workforce. Congress could then defer further consideration of repealing the sanctions and antidiscrimination provisions of IRCA until a simpler and more reliable verification system has been in place for sufficient time to evaluate its effectiveness. (See p. 78.)

Recommendations to the Attorney General

GAO recommends increased educational efforts for the Nation's employers on how to comply with IRCA's antidiscrimination provision and various actions that the Attorney General can take to improve INS' management of the law. (See p. 100.)

Agency Comments

During the course of its work, GAO kept officials of the various agencies apprised of the substance of its findings through periodic briefings. GAO also discussed its tentative conclusions with key Justice Department officials. GAO's principal findings on discrimination were entirely dependent on data GAO generated from sources outside of these agencies. GAO thus did not seek agency comments on its recommendations. (See p. 36.)

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Abbreviations

CPS	Current Population Survey
EEOC	Equal Employment Opportunity Commission
ESA-91	Employment Eligibility Verification Record Keeping Requirements Form
FLSA	Fair Labor Standards Act
GAP	General Administrative Plan
I-9	Employment Eligibility Verification Form
INS	Immigration and Naturalization Service
IRCA	Immigration Reform and Control Act of 1986
LAW	Legally Authorized Worker Program
MALDEF	Mexican American Legal Defense and Educational Fund
NLRA	National Labor Relations Act
OFCCP	Office of Federal Contract Compliance Programs
OMB	Office of Management and Budget
OSC	Office of Special Counsel for Immigration-Related Unfair Employment Practices
SBA	Small Business Administration
SIC	Standard Industrial Code
SSA	Social Security Administration
SSN	Social Security Account Number
WHD	Wage and Hour Division

Chapter 1

Introduction

During the 1970s and 1980s, border patrol apprehensions of aliens entering the country illegally increased from about 250,000 in 1970 to about 1.6 million in 1986. In 1971, Congress began to consider legislation that would eliminate the magnet attracting illegal aliens—jobs. This legislation would, for the first time, penalize employers for knowingly employing aliens who were not authorized to work. This was a controversial proposal, as evidenced by the 15 years of debate leading to the enactment of the Immigration Reform and Control Act (IRCA) on November 6, 1986. A key controversy was whether employers would, fearing sanctions, begin to discriminate against foreign-looking or foreign-sounding citizens and legal aliens.

In 1981 the Select Commission on Immigration and Refugee Policy, which was appointed to study the problem of immigration reform, stressed the need for a secure and uncomplicated employer verification system. The Commission's final report stated that:

> ". . . an effective employer sanctions system must rely on a reliable means of verifying employment eligibility. Lacking a dependable mechanism for determining a potential employee's eligibility, employers would have to use their discretion in determining that eligibility."[1]

The report also stated that (1) most of the Commissioners supported a means of verifying employee eligibility that would enable employers to have confidence that applicants were authorized to work and (2) the Commissioners believed that a secure verification system would alleviate any potential discrimination.

Section 101(a)(1) of IRCA (referred to hereafter as the sanctions provision) requires verification of work eligibility and establishes penalties (sanctions) for employers who knowingly hire unauthorized aliens. Specifically, the act (1) makes it unlawful to knowingly hire and recruit or refer for a fee aliens who are not authorized to work in the United States, (2) requires those who hire and recruit or refer for a fee to verify both the identity and the employment eligibility of hired individuals (including U.S. citizens), and (3) makes it unlawful to knowingly continue to employ an alien who is or has become unauthorized to work or to knowingly obtain the services of an unauthorized alien through a contract. Depending on the violation, noncompliance with IRCA can result in civil and criminal penalties. The law permits employers to continue to employ unauthorized aliens hired before November 6, 1986, (i.e., "grandfathered" aliens) without being sanctioned, but the Immigration and Naturalization Service (INS) can deport such aliens.

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[1] U.S. Immigration Policy and The National Interest. The Final Report and Recommendations of The Select Commission on Immigration and Refugee Policy to the Congress and the President of the United States, March 1, 1981.

The act also prohibits employment discrimination on the basis of national origin and citizenship status. The law established a new enforcement unit within the Department of Justice—the Office of the Special Counsel for Immigration-Related Unfair Employment Practices (OSC)—to prosecute complaints alleging national origin and citizenship status discrimination. It further authorized the Attorney General to designate administrative law judges to hear discrimination and employer sanctions cases.

Employer Verification of Work Eligibility

Generally, for employees hired after November 6, 1986, IRCA requires all employers to verify the employee's identity and eligibility to work in the United States. Job applicants may use any of 17 various documents—10 of which INS issues—to establish employment eligibility. (See table 1.1.) On the basis of such documents, employers are required to complete an Employment Eligibility Verification Form (I-9) for each new employee. In completing the I-9 form, employers certify that they have examined the documents presented by the applicant, that the documents appear genuine, and that they relate to the individual named. Therefore, in making their certifications, employers are expected to judge whether the documents presented are obviously fraudulent or counterfeit.[2] The completed I-9 forms are then subject to inspection by both INS and the Department of Labor.

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[2] A counterfeit document is one that is illegally manufactured, such as a fake Social Security card. A fraudulently used document is a genuine document that is illegally used (e.g., an alien using another person's valid Social Security card) with or without alterations.

Table 1.1: Documents That Applicants Can Use to Establish Work Eligibility

1. U.S. Passport
2. Certificate of U.S. Citizenship (Issued by INS)
3. Certificate of Naturalization (Issued by INS)
4. A foreign passport that includes an authorization to work
5. Resident Alien INS Form I-551
6. Temporary Resident Card, INS Form I-688
7. Employment Authorization Card, INS Form I-688A
8. Social Security Card
9. Reentry Permit, INS Form I-327
10. Refugee Travel Document, INS Form I-571
11. Certification of Birth issued by the State Department
12. Certification of Birth Abroad issued by the State Department
13. An original or certified copy of a birth certificate issued by a state, county, or municipal authority
14. An employment authorization document issued by INS
15. Native American tribal document
16. U.S. Citizen Identification Card, INS Form I-197
17. Identification card for use of resident citizen in the United States, INS Form I-179

Source: 8 C.F.R. Section 274a.2(b)(1988).

Changes in Employment Verification System

Section 101(a)(1) of IRCA states that the President shall monitor and evaluate the extent to which IRCA's verification system provides a secure method to determine employment eligibility. If the system is found not to be secure, any changes the President proposes should provide for reliable determinations of employment eligibility and identity, be counterfeit-resistant, protect individual privacy, be used for employment verification only, and not be used for law enforcement purposes unrelated to IRCA.

The section also states that if the President proposes a major change to the verification system that would either (1) require an individual to present a new work eligibility card or (2) provide for a telephone verification system, the President must notify Congress of the proposed change 2 years in advance of implementation. If the President proposes a change in any card used for accounting purposes under the Social Security Act to make it a primary identifier, the President must notify Congress of the proposed change 1 year in advance of implementation. Either or both of these changes would require congressional approval.

Timetable for Employer Verification Requirements

The law and implementing regulations established timetables for enforcing the law and related penalties. Implementation was divided into three phases: a 6-month education period, a 1-year period when citations were issued to first-time violators, and full enforcement of sanctions against those who violate the law. When INS proposes to impose a penalty, it issues a Notice of Intent to Fine.

Unlawful Discrimination

Congress was concerned that employers would not hire "foreign-looking or foreign-sounding" U.S. citizens or legal aliens to avoid being sanctioned. Under the new immigration law, employers with four or more employees may not discriminate against any authorized worker in hiring, discharging, recruiting, or referring for a fee because of that individual's national origin or citizenship status. Employers with fewer than four employees are not subject to the antidiscrimination section.

Title VII of the Civil Rights Act of 1964 and the remedies against discrimination it provides remain in effect. Title VII prohibits discrimination against anyone on the basis of national origin in hiring, discharging, recruiting, assigning, compensating, and other terms and conditions of employment. Charges of national origin discrimination against employers with 15 or more employees are generally filed with the Equal Employment Opportunity Commission (EEOC). Additionally, under title VII, charges that involve both national origin and citizenship discrimination by those larger employers may be filed with EEOC.

Under the new immigration law, charges of national origin discrimination against employers with 4 to 14 employees and charges of citizenship status discrimination against employers with 4 or more employees are filed with OSC. After investigating the charge, OSC may file a complaint with an administrative law judge. The administrative law judge will conduct a hearing and issue a decision.

Although IRCA's antidiscrimination provision is distinct from and complements the provisions of title VII, both EEOC and OSC have jurisdiction in some cases. These are cases where complainants allege both national origin and citizenship status discrimination against employers having 15 or more employees. IRCA, however, prohibits filing the same discrimination charges arising from the same set of facts with both EEOC and OSC. A charging party is thus forced to file with one agency or the other. If the charging party selects an agency without authority over the complaint or for which no remedy is available (e.g., OSC does not have authority over aspects of discrimination that deal with working conditions but

EEOC does), the charging party may not be able to make a second filing with the other agency before the statute of limitations runs out. To prevent this from occurring, EEOC and OSC have referred charges to each other since the law passed and entered into an agreement effective in July 1989 designating each other as agents for purposes of complying with statute of limitations deadlines.

Employers engaging in unfair immigration-related employment practices under the new law are to be ordered to stop the prohibited practice and may be penalized. They may be ordered to (1) hire, with or without back pay, individuals directly injured by the discrimination; (2) pay a fine; and (3) keep certain records regarding the hiring of applicants and employees. The judge can also require that the losing party pay the prevailing parties' (other than the United States') reasonable attorney fees if the losing party's claim had no reasonable basis in law or fact.

INS Responsible for Enforcing the Sanctions Provision

INS is responsible for enforcing the sanctions provision.[3] According to an INS official, as of September 30, 1989, INS had 1,343 investigators on duty in its headquarters, 4 regional offices, and 33 districts. Besides sanctions cases, investigators are also responsible for enforcing provisions against immigration fraud and apprehending deportable criminal aliens. In fiscal year 1987, INS was authorized 135 additional Border Patrol positions to investigate employers, inspect I-9 forms, and educate employers about the law's requirements.

INS' employer sanctions budget for fiscal years 1988 and 1989 was about $60 million and $63 million, respectively, or about 7 percent of its budget in both years. INS' fiscal year 1990 employer sanctions budget of $71 million (8.4 percent of its budget) provides about 1,200 positions for employer sanctions. (See app. I for details on INS' employer sanctions budgets.)

According to INS records, about 62 percent of employer sanctions enforcement resources were used to investigate employers suspected of employing unauthorized aliens in fiscal year 1989. The rest was devoted to random I-9 compliance inspections nationwide. According to INS, this program—the General Administrative Plan (GAP)—has five objectives: (1) to detect I-9 form violations, (2) to identify employers who knowingly hire unauthorized aliens, (3) to promote compliance, (4) to monitor I-9 compliance among various industries, and (5) to help plan future enforcement efforts. Half the inspections target employers from industries that have in the past employed significant numbers of unauthorized aliens. According to INS, the remaining inspections cover employers randomly selected from all industries and geographical areas to ensure fairness and balance in enforcing the law.

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[3] Generally, INS investigators and Border Patrol agents are responsible for implementing the sanctions provision. Throughout this report "investigators" refers to both Border Patrol agents and INS investigators.

The Commissioner of INS established the following objectives for the sanctions program during fiscal year 1989:

- aggressively investigate leads against substantive violators to develop high quality criminal and administrative cases;
- continue to implement GAP for compliance inspections;
- continue to systematically educate employers in an efficient and cost-effective manner;
- continue developing a standardized employment authorization documentation system; and
- refine the existing INS management information system (called OASIS) for rapid and timely data collection, analysis, and dissemination.

For fiscal year 1990, the President has established the following objectives for the program:

- 24,000 employer inspections and investigations and increased imposition of sanctions where appropriate; and
- 750,000 employer educational contacts and 830 public speaking engagements to increase employer and alien awareness of prohibitions and sanctions against unauthorized alien employment.

Two Labor Offices Responsible for Inspecting Employers' Records

Two offices within Labor's Employment Standards Administration are responsible for inspecting employers' I-9 forms—the Wage and Hour Division (WHD) and the Office of Federal Contract Compliance Programs (OFCCP). In addition to its I-9 responsibilities, the WHD administers and enforces laws that establish standards for wages and working conditions. These laws cover virtually all private sector employment. From September 1, 1987, to August 31, 1989, WHD inspected I-9s at 62,857 employers. The OFCCP—in addition to its I-9 responsibilities—administers a number of statutes, including Executive Order 11246, which prohibits federal contractors from discriminating on the basis of race, color, religion, sex, or national origin. From September 1, 1987, to August 31, 1989, OFCCP inspected I-9s at 10,531 employers.

WHD and OFCCP forward the results of their I-9 inspections to INS district offices with information on apparent noncompliance with the I-9 requirements and possible employment of unauthorized workers. Under a continuing resolution for fiscal year 1990, Labor has been authorized $5 million and 91 positions for I-9 compliance inspections.

Previous GAO Reports

From 1970 until IRCA's enactment in 1986, we issued at least 16 reports on immigration reform and related issues. As early as 1973 we supported enactment of legislation to establish employer sanctions.[4]

IRCA requires us to issue three annual reports on the sanctions provision each November starting in 1987. Specifically, the act requires us to review the implementation of the sanctions provision for the purpose of determining whether the provision has (1) been carried out satisfactorily, (2) caused a pattern of discrimination, and (3) created an unnecessary regulatory burden.

Our first two reports[5] found that:

- INS and Labor had carried out the sanctions provision satisfactorily.
- Information was insufficient to determine if the sanctions provision had caused an unnecessary regulatory burden on employers.
- The data on discrimination did not establish that the sanctions provision (1) had caused a pattern of discrimination or (2) was an unreasonable burden on employers. However, on the basis of our survey of employers, we estimated in our second report that since IRCA's enactment, 528,000 employers began or increased unfair employment practices (e.g., began a new policy to hire only U.S. citizens). We could not determine whether the employers began these practices because of the law or how many eligible workers were affected.

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[4] More Needs to be Done to Reduce the Number and Adverse Impact of Illegal Aliens in the United States (July 31, 1973, B-125051).

[5] Immigration Reform: Status of Implementing Employer Sanctions After One Year (GAO/GGD-88-14, Nov. 5, 1987); Immigration Reform: Status of Implementing Employer Sanctions After Second Year (GAO/GGD-89-16, Nov. 15, 1988).

Chapter 2

Objectives, Scope, and Methodology

The objectives of this review were to determine whether the sanctions provision

- resulted in a pattern of discrimination against eligible workers,
- was carried out satisfactorily by INS and Labor, and
- resulted in an unnecessary regulatory burden for employers.

Another objective was to determine if an unreasonable burden on employers was created by private groups' use of the expanded antidiscrimination protection in IRCA to harass employers.

In general, our objective regarding discrimination was to provide information that Congress can use to determine if provisions of the law should be repealed. The act provides expedited procedures to consider repealing the sanctions provision if we find that it has resulted in a widespread pattern of discrimination and if Congress concurs with our conclusion. In addition, if we report that no significant discrimination has resulted from the sanctions provision or that an unreasonable burden has been created for employers, Congress can repeal the antidiscrimination provision using those procedures. Congress could repeal these sections by enacting a joint resolution within 30 days of our report, stating in substance that it approves our findings. The provisions to repeal the law are discussed in more detail in appendix IV.

The following describes the criteria we used and the scope and methodology of the work we did to meet our objectives. In summary, we used a considerable degree of judgment in further defining our review objectives because the law and legislative history provide little guidance.

How We Defined a "Widespread Pattern" of Discrimination

We analyzed IRCA and its legislative history to identify the criteria Congress wanted us to apply in making a determination on a "widespread pattern" of discrimination. On the basis of that analysis:

- The criteria include discrimination in the hiring, or recruitment or referral for a fee, and discharging of employees or job applicants but not discrimination involving conditions of employment, such as wages or promotions. Discrimination in such areas as housing or public accommodations is not included.
- The criteria include discrimination on the basis of a person's national origin and also on the basis of a person's citizenship or alien status to the extent such discrimination has the purpose or effect of discriminating on the basis of national origin.

- The criteria include discrimination that is "new" resulting "solely" from the implementation of employer sanctions. This element can be satisfied by (1) evidence that discrimination was motivated by the sanctions provision; or (2) evidence of discrimination on the basis of actions that are unique to IRCA, such as the documentation and verification requirements (e.g., use of the form I-9).
- The criteria include the number of employers who discriminate, the number of employees or applicants affected, and the distribution of discriminatory practices by industry type and geographic region. The determination of "widespread pattern" calls for exercising judgment since there is no precise formula that applies. However, the legislative history indicates that such a "widespread pattern" exists if the sanctions provision has resulted in "a serious pattern of discrimination" and more than "just a few isolated cases of discrimination."

Appendix IV contains a more detailed presentation of our legal rationale for our definition of widespread discrimination along with a discussion of comments we received on the draft legal analysis from various individuals and organizations. The commenters generally agreed with most aspects of our analysis. However, most commenters disagreed with one aspect of our analysis—that Congress did not intend for our determination to include citizenship discrimination that does not have the purpose or effect of national origin discrimination. Because of this disagreement, we attempted to measure citizenship discrimination resulting from the sanctions provision so that Congress may make its own judgment about the significance and effects of such practices.

Methodologies Used to Determine Whether the Sanctions Provision Resulted in a "Widespread Pattern" of Discrimination

The best methodology to determine whether IRCA has resulted in a pattern of discrimination would have been to measure employment discrimination before IRCA and then compare it with information gathered after IRCA had been implemented and to rule out other possible explanations for changes. Unfortunately, we were not able to locate sensitive pre-IRCA baseline measures of discrimination. Further, there was no comparison group not subject to IRCA. Thus, we have used multiple methods to obtain a variety of measures on the effects of the law.

When Congress mandated that we measure the law's discriminatory effects, it knew we could not turn the clock back. Congress also knew we would not be able to develop a rigorous design to arrive at causal linkages. Nonetheless, Congress included a provision in IRCA that requires us to determine if the law resulted in a "widespread pattern of discrimination." Given this perspective, we believe it is reasonable to assume that

Congress wanted GAO, recognizing the obvious methodological limitations, to proceed with the review and exercise reasonable judgment on the basis of the best available evidence in reaching our determination. We considered the evidence from different methods as sufficient to provide a basis for making a reasonable determination.

The different methods used to provide evidence on whether implementing the sanctions provision has resulted in a widespread pattern of discrimination against authorized workers were:

- A survey of a stratified random sample of 9,491 employers to determine whether and how hiring practices were affected by the sanctions provision.
- A "hiring audit" of 360 randomly selected employers in two cities. For each audit, two people applied separately for a job advertised in the newspaper. The pair was closely matched on job qualifications, but one person in each pair was foreign-looking and foreign-sounding. We then compared how employers treated both job applicants. We also sent these employers our employer survey.
- A survey of 300 judgmentally selected persons who had applied for a job in person since January 1, 1989, in Miami, New York City, Chicago, Dallas, and Los Angeles. We compared the experiences relayed by the foreign-sounding applicants and non-foreign-sounding applicants regarding the employers' hiring practices.
- An analysis of the number of national origin discrimination charges received by EEOC from fiscal year 1979 to May 1989. The purpose was to determine whether there has been a significant increase in charges after IRCA. We also accumulated data on the number of charges that EEOC categorized as IRCA-related. We did not verify the accuracy or reliability of the EEOC system for tracking discrimination charges.
- A review of discrimination charges received by OSC from May 1988 to May 1989 to identify those that appeared to be related to employer sanctions.
- An analysis of state employment service data in Illinois, Florida, and Texas to compare the percentages of Hispanics and other minorities[1] who found jobs through state employment services with that of Anglos and blacks before and after IRCA. We did not verify the accuracy or reliability of the employment services' placement files.

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[1] Other minorities include American Indian, Alaskan Native, and Asian and Pacific Islander.

We also collected data on the number and types of employment discrimination charges that various state, local, and private organizations had received from July 1, 1988, to June 30, 1989.

To encourage employers to answer our survey questions honestly, the survey responses were anonymous. We did not explicitly ask employers to judge whether their reported hiring practices were discriminatory. Rather, we developed seven survey questions that described a range of possible hiring practices that we determined constituted illegal discriminatory behaviors. (See table 3.1.) All seven questions either asked about practices employers started as a result of their understanding of the law or described behaviors unique to the sanctions provision (e.g., completing I-9 verification forms for only foreign-appearing persons).

GAO's survey questions were directed to employers' adoption of specific hiring practices. The questions avoided any implication regarding the legality or illegality or fairness or unfairness of their practices. In particular, the word discrimination was not used.

We consulted a panel of outside experts to comment on our questionnaire and other methodologies used during our review. Stanley Presser, a noted expert in survey design, was a key consultant in developing the questionnaire. He is the Director of the Survey Research Center at the University of Maryland. Eugene Ericksen, Temple University, assisted in the sampling design. Other expert consultants included Frank Bean, Urban Institute; Barry Chiswick, University of Illinois at Chicago; Doris Meissner, Carnegie Endowment for International Peace; David North, New Transcentury Foundation; and Marta Tienda, University of Chicago.

We made every effort in the survey to obtain only information on behaviors resulting from the law's implementation. We conducted more than 50 pre-tests—an unusually large number—of the employer survey in five cities to ensure that employers understood the questions and could accurately report the reasons for their practices. We considered the possibility that some employers may use the law as a defense for discriminatory practices that pre-existed IRCA. However, there was no evidence from the pretest to indicate that employers were using the new law as a defense against discriminatory behaviors that existed before the law. We also included explicit language in the questionnaire that linked behaviors to IRCA. For example, in one question (question 23), the question includes (1) the phrase "as a result of your firm's understanding of the 1986 immigration law" [underlining appears in questionnaire],

(2) instructions, set off in a box, that read "IMPORTANT: CHECK 'YES' ONLY IF ACTION TAKEN WAS A RESULT OF THE 1986 IMMIGRATION LAW," and (3) "Began" at the beginning of each item relating to discrimination to denote new behavior since the law.

Employer Survey

We surveyed a stratified random sample of 9,491 employers nationwide to obtain data on the law's implementation. In reporting the results, we divided the country into eight areas: (1) Los Angeles; (2) New York City; (3) Chicago; (4) Miami; (5) California, except Los Angeles; (6) Texas; (7) rest of the west; and (8) rest of the United States.[2] We also selected employers in each area according to three approximately equal levels of ethnic composition—those industries with high, medium, and low levels of Hispanic and Asian employees as determined by the 1980 U.S. census. We hypothesized that employers' knowledge and compliance with the law may vary depending on the number of Hispanics and Asians they employ.

We also selected a separate sample of agricultural employers. We thought their knowledge and compliance with the law might be different from those of other employers because the law exempted employers of seasonal agricultural employees from the sanctions provision until December 1, 1988. However, agricultural employers represented only about 1 percent of our universe, and for most of the analyses presented in this report employers in the agricultural strata generally responded the same as other employers. Consequently, the employer responses for the agricultural strata are not reported as a separate analysis but are always in the total.

Although the antidiscrimination provision exempts employers with fewer than four employees, we are reporting the discrimination by employers with one or more employees because all employers are subject to the sanctions provision.

In late April 1989, we mailed our questionnaire to 9,491 employers selected from a private firm's list of approximately 5.5 million employers. Those employers who did not respond were mailed a second questionnaire in June. During August 1989, we telephoned employers who still had not responded and sent those who agreed to respond a third questionnaire.

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[2] The rest of the west includes New Mexico, Arizona, Colorado, Hawaii, Alaska, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

The original sample of 9,491 was reduced to an adjusted sample of 6,317 employers because (1) some were out of business or could not be located or (2) they had no employees or hiring was done elsewhere. (See table 2.1.)

Table 2.1: Employer Survey Sample

Sample		9,491
Out of business/could not be located	1,716	
Hiring elsewhere/no employees	1,458	
Total unusable		**3,174**
Adjusted sample		6,317

When data collection ended in September 1989, 4,362 employers (69 percent of the adjusted sample) had returned usable responses. The 0.9 million difference from the 5.5 million in our original universe is our estimate of the number of employers in the universe who had no employees or whose hiring was done elsewhere. Further, in making our projections to 4.6 million employers, we assumed nonrespondents would have answered the survey as our respondents did. (See app. III for details.)

To encourage honest responses, we did not ask for employer names and guaranteed anonymity for their responses. We included a numbered postcard with each (unnumbered) questionnaire, which employers were instructed to mail separately from their completed questionnaire. The number on the postcard corresponded to the identity of the employer. When we received the postcard, we counted the employer as having mailed the completed questionnaire.

The sampling plan was designed so that estimates from 95 of every 100 samples selected in this way would not differ by more than ±5 percent from the true population values. Although our survey results are representative of 4.6 million U.S. employers, the results have certain limitations.[3] (See app. III for a full discussion of sample selection and sampling errors; app. II for questionnaire results.)

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[3] The results are based on weighted data. The weights are calculated as the ratio of the universe divided by the sample for each stratum. The estimated numbers and percents cited in the text of the report do not necessarily correspond to the number and percents listed in appendix II. The numbers shown in the appendix are based on those who responded to each item. The estimates in the text relating to discrimination are based on responses to more than one question, and are generalized to the entire universe of 4.6. million employers. As noted earlier, we made the assumption that respondents who did not answer any of the discrimination practice questions did not engage in discriminatory practices.

In addition to sampling errors, survey results are subject to different kinds of systematic errors, or bias. For example, it is possible that some respondents who were engaging in behavior illegal under the law would not report, or would underreport the extent of, such behavior. This kind of bias would result in an underestimation of illegal behavior. Alternatively, some respondents might have falsely reported that they engaged in discriminatory practices in hopes that such responses might lead, through a GAO finding, to the repeal of employer sanctions. This kind of bias would lead to survey results overstating the extent of discrimination.

A different kind of bias would result if respondents who did not understand the law were motivated by a desire to give what they thought was the socially acceptable response. For example, respondents might incorrectly understand the law as requiring them to hire only U.S. citizens. They might therefore report that they hired only U.S. citizens, even if in fact they did not. Respondents might also have other misconceptions about the law. This type of bias could cause the survey results to overestimate or underestimate the incidence of discrimination.

Survey results are also subject to nonresponse bias. Nonresponse bias occurs to the extent the answers that would have been given by nonrespondents differ from those given by respondents. It is likely that at least some employers not conforming to the law would decide not to respond to our survey rather than lie about their behavior or report illegal behavior. To the extent this occurred, the survey results would underestimate the extent of IRCA-related discrimination. In addition, survey respondents might decide not to respond for a wide variety of reasons. It is not possible to assess the effects of this type of bias on the results of this survey.

Hiring Audit

We did a hiring audit to directly observe whether employers treated foreign-looking or foreign-sounding job applicants differently. Specifically, we wanted to know whether persons who look and/or sound foreign were: (1) more likely to be asked for documents, (2) asked to show documents earlier in the hiring process, (3) not allowed to proceed as far into the hiring process, and (4) likely to receive fewer job offers.

The hiring audit was done under contract with the Urban Institute in Washington, D.C.[4] The Urban Institute recruited 16 college students (called testers) to apply for jobs in Chicago and San Diego. All testers were men between the ages of 19 and 24. They were matched as closely as possible on (1) education, (2) work experience, and (3) oral communication skills. Testers' biographies were modified to match work-related qualifications and make their qualifications typical of most young adult jobseekers. Testers were instructed to give similar answers to various questions the employer might ask. We attempted to ensure that both members of each pair would appear closely matched on job qualifications. The only significant difference was that one member was foreign-looking and foreign-sounding and the other was not. Although each pair was closely matched on all employment-relevant characteristics, we cannot rule out the possibility that differences in hiring outcomes between testers stemmed from factors other than national origin. Thus, we cannot be certain that if an individual employer did not offer a job to a tester, that the employer was discriminating. However, if the aggregate results show a pattern of Hispanic testers not being offered jobs, we believe this indicates national origin discrimination. Other limitations to the hiring audit are discussed in appendix III.

Before applying for jobs, the 16 testers (8 in each city) received 2-1/2 days of training. After training, they were assigned to pairs (four pairs in each city). Each pair consisted of an Anglo and a Hispanic.[5] Each member applied for the jobs first half the time. The four pairs in Chicago applied for 169 jobs advertised in the Sunday Chicago Tribune, and the four pairs in San Diego applied for 191 jobs advertised in the Sunday San Diego Union. The jobs generally called for low-skilled, entry-level applicants and usually required no more than a high school education (e.g., management trainee, waiter). The testers were slightly overqualified for these jobs since their resumes indicated they all had at least 1 year of college education. The hourly wages offered for most jobs ranged from $3.75 to $7.50 per hour.

The first step in applying for each job was for each pair of testers to telephone or visit the employer listed in the advertisement and apply for the job. Each tester applied separately and recorded the employer's observed behavior on a data collection form immediately afterward. If asked, each tester provided the employer with the same type of identity and work eligibility documents—a driver's license and a Social Security card.

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[4] The Urban Institute staff who worked with GAO to plan and implement the hiring audit were Harry Cross, Research Associate; assisted by Jane Mell, Genevieve Kenney, and Wendy Zimmerman. See Employer Hiring Practices: Differential Treatment of Hispanic and Anglo Job Seekers, Urban Institute Report No. 90-4, (Washington, DC: Urban Institute Press).

[5] Hispanics were chosen for the audit because both Congress and minority interest groups felt this segment of the population was at the greatest risk of discrimination as a result of IRCA's new procedures.

If asked to complete a job application or the I-9 form, each tester checked the "citizen" box. As a result, we believe the hiring audit measured discrimination based only on the testers' foreign appearance or accent (i.e., national origin). To measure citizenship discrimination, testers would have had to check the "alien" box on job applications or present work eligibility documents issued by INS.

Testers also gave the employer a phone number to call for more information or to offer a job. Employers calling these numbers heard a recorded message from a person identified as a relative of the tester asking them to leave their name, number, and a brief message. The appropriate tester returned the employer's call and recorded what the employer said on a form. In order to provide each tester in a pair with an equal opportunity to receive an interview or job offer, any tester with a job offer immediately turned it down. If the employer did not leave a message on a tester's answering machine within 2 or 3 days after the tester applied or interviewed for the job, that tester called the employer and asked about the status of his application. After these phone calls, the audit of an individual employer was then generally considered complete. A total of 360 hiring audits were done in the two cities. The results of the hiring audit are not generalizable to the Nation.

After the audit was completed, we mailed the 360 employers a copy of our employer survey questionnaire so that we could compare their observed behaviors with their written responses to the discrimination questions in the survey. This was an attempt to determine to some extent whether (1) the behavior we observed during the audit resulted from the sanctions provision and (2) the employer survey estimates of the level of discrimination were different from what they would have been had we actually observed the behaviors of all employers surveyed. Unfortunately, we were unable to use the data from this survey effort because the respondent to this questionnaire may not have been the same person observed in the hiring process, and the number of respondents was not sufficient to allow for a meaningful analysis of the responses.

Job Applicant Survey

We surveyed foreign-sounding and non-foreign-sounding job applicants who had applied for a job since January 1, 1989, to determine if the sanctions provision was causing employers to treat foreign-sounding applicants differently from those with no accent (i.e., national origin discrimination). For example, if we found employers were more likely to apply work verification requirements (e.g., completing an I-9 form) to only foreign-sounding applicants, this would constitute evidence of discrimination that resulted solely from the sanctions provision.

We visited organizations in Los Angeles, Miami, Dallas, Chicago, and New York City that were providing educational services to temporary or permanent resident aliens. At these organizations, we were able to locate 150 people meeting our criteria who were willing to complete our survey. We compared those results with the results from 150 persons (all U.S. citizens) with no foreign accent at state employment agencies in those cities who also had applied for a job in person since January 1, 1989. The comparison, however, must be interpreted cautiously because the participants were not randomly selected, and the results cannot be generalized. Further, the participants applied for different types of jobs, and heard about the job openings from different sources (e.g., friends versus newspapers). We asked only about the applicants' most recent job application experiences. (See app. V.)

The following table shows the status and location of each person who completed the survey.

Table 2.2: Location and Citizenship Status of Job Applicants Surveyed

Location	Temporary resident alien	Permanent resident alien	U.S. citizen
Miami[a]	23	5	30
Los Angeles	30	0	30
Chicago	26	4	30
New York	25	5	30
Dallas	23	7	30
Total	**127**	**21**	**150**

[a] The numbers for Miami do not include one person whose immigration status was not known and another person who had received political asylum.

State Employer Service Placements

If implementing employer sanctions caused a pattern of discrimination, it might be reflected in state employment service placements of Hispanics and other minorities compared to placements of Anglos and blacks. For this reason, we analyzed state employment service placement data from 1982 to 1989—before and after IRCA's enactment in 1986. The number of placements per year from 1982 to 1988 ranged from 108,651 to 506,200 in the states for which we analyzed job placement rates (Florida, Illinois, and Texas). We limited our analysis to three states—Florida, Illinois, and Texas. New York and California were not included because state employment service officials in these states said that comparable pre- and post-IRCA data were not available.

EEOC Data Analysis

We obtained a set of reports from EEOC that included information for the period October 1978 through May 1989. These reports showed the issue for filing as well the basis for the complaint. Issues were categorized into—hiring, discharge, layoff, and other. Race and national origin were defined as follows: Hispanic, Hispanic/Mexican, Asian, black/Hispanic, black/other, black, white, other national origin, other combination, and other single. We were not able to verify the accuracy of the data supplied.

The data was first arrayed according to year, issue, and basis (race or national origin). Percentages were then computed to identify the presence or absence of a discernible trend.

Analysis of OSC Charges

Justice's Office of Special Counsel (OSC) enforces IRCA's antidiscrimination provision. As of October 30, 1989, OSC had received 708 charges.

We analyzed 415 discrimination charges filed with OSC from May 2, 1988, to May 1, 1989, to evaluate the types of allegations filed and identify those that related to the sanctions provision. To do this, we used criteria similar to EEOC's criteria, which were established in March 1987, for identifying IRCA-related charges. Specifically, charges are IRCA-related if (1) employers either have refused to hire or have fired people because of immigration status, (2) employers refused to accept documentation for authorization to work, (3) employers appeared to have a policy to hire only U.S. citizens, and (4) employers asked only the job applicants or current employees who looked or sounded foreign to prove they were authorized to work in the United States.

How We Defined Carrying Out the Sanctions Provision Satisfactorily

We decided that carrying out the sanctions provision satisfactorily meant, at a minimum, that INS developed plans and policies and implemented procedures that could reasonably be expected to (1) educate employers about their requirements under the law and (2) identify and fine violators. We applied the same standard to Labor, with the exception of fining employers.

The standard for "satisfactory" does not include factors beyond the government's control, such as those that could increase illegal immigration despite IRCA. An example is conflict in Central America, which could result in more illegal immigration than existed before the law. Also, the law would still be carried out satisfactorily even if it caused employment discrimination, provided that the government had made reasonable efforts to educate employers about the law.

Methodologies Used to Determine Whether the Sanctions Provision Was "Carried Out Satisfactorily"

To determine whether the sanctions provision had been carried out satisfactorily, we

- surveyed a random sample of employers to determine their knowledge of, and compliance with, the sanctions provision;
- reviewed a random sample of INS case files of employers who had been fined for violating the sanctions provision;
- examined INS and Labor data on employer compliance with the sanctions provision;
- evaluated the INS program of random employer compliance inspections to determine whether it was accomplishing its objectives; and
- interviewed INS and Labor officials concerning the policies and procedures for educating employers and enforcing the sanctions provision.

To determine whether INS field offices were satisfactorily implementing the INS Commissioner's enforcement policy, we reviewed a random sample of INS case files of employers who had been fined for violations. We selected 300 cases from the 704 case files that were closed from July 1, 1988, to February 28, 1989. INS considers a case closed when the employer and INS reach a settlement on the penalty for the violation or the employer has failed to respond to, or exhausted all rights to appeal INS' notice of intent to fine.

To determine the extent to which employers were aware of and in compliance with the law, we examined our survey results along with INS and Labor data on their efforts to enforce the law. Specifically, we analyzed employers' responses to our survey questions about their awareness of the law, as well as their compliance with the I-9 form requirement.

To understand how the law was being implemented, we interviewed federal, state, or private officials primarily in high alien population cities—Washington, D.C., Chicago, Dallas, Los Angeles, Miami, and New York City—where we believed the law could have a disproportionate effect because of the large number of resident aliens. We also visited INS offices in El Paso, McAllen, and Harlingen, Texas, as well as Cleveland, San Diego, New Orleans, and Baltimore.

How We Defined Unnecessary Regulatory Burden

IRCA directed us to review the implementation of the sanctions provision to determine if it has caused an unnecessary regulatory burden on employers. The primary burden on employers is preparation of the I-9 forms. In the absence of further congressional guidance, we decided that the regulatory burden would be unnecessary if the law failed to achieve its objectives, which are to reduce illegal immigration to the United States and to reduce unauthorized alien employment.

The law could fail to reduce unauthorized alien employment if aliens use fraudulent or counterfeit documents to circumvent the law's eligibility verification system. Employers who knowingly employ unauthorized aliens can be sanctioned for hiring or continuing to employ unauthorized aliens. Generally, INS cannot sanction any employer who hires an unauthorized alien if the alien was able to complete the form I-9 by presenting the employer with fraudulent or counterfeit documents that appeared genuine.

Methodologies Used to Determine Whether the Sanctions Provision Has Caused an Unnecessary Regulatory Burden

To determine whether the sanctions provision has caused an unnecessary regulatory burden on employers, we

- included questions on our employer survey about (1) the time required to complete the I-9 form, (2) whether any job applicants presented fraudulent or counterfeit documents, and (3) whether the sanctions provision has effectively reduced unauthorized alien employment;
- obtained INS data on the number and types of fraudulent or counterfeit documents presented to employers by unauthorized aliens who were apprehended at work; and
- analyzed data from INS and other organizations that could show whether reductions in illegal immigration or unauthorized alien employment have occurred (e.g., alien apprehensions at the U.S. border).

Private Groups' Use of Discrimination Protection to Harass Employers

IRCA also directed us to review the implementation of the sanctions provision to determine if the antidiscrimination provision resulted in frivolous lawsuits being brought against employers by private groups. The legislative history shows that congressional conferees were concerned that such suits would result in an "unreasonable burden" and might occur if private groups used the expanded antidiscrimination protection in IRCA to harass employers.

Therefore, our determination focused on whether the antidiscrimination section is a vehicle for harassing employers. To make this determination we needed a two-step approach. First, we analyzed the number of complaints that have been brought under the antidiscrimination provision to determine whether private groups had filed a significant number of complaints. Second, if a significant number of complaints had been filed, we would review the cases to determine whether it appeared that employers were being harassed. Appendix IV contains a more detailed discussion of this issue.

Methodologies Used to Determine Whether Private Groups Harassed Employers

To determine whether private groups used the law's discrimination protection to harass employers, we reviewed discrimination complaints received by OSC and EEOC that were filed by private groups on behalf of the complainant.

Agency Comments

We discussed our methodologies and approaches with agency officials and took their comments into account in refining our methodologies.

We kept the affected agencies apprised of the substance of our work through periodic briefings, but we did not seek formal comments on our draft report from them. Our principal findings on discrimination were entirely dependent on data we generated from sources other than facts developed by, or in the possession of, these agencies. We discussed our tentative conclusions with key Justice Department officials. We did our work between November 1988 and February 1990, and in accordance with generally accepted government auditing standards.

Discriminatory Practices Widespread: A Substantial Amount Resulted From the Law

Congress has mandated that GAO determine whether widespread discrimination has resulted solely from the law. As discussed in chapter 2, making the link between discriminatory practices and the law is exceedingly difficult. We used various techniques and approaches to try to measure the discrimination and determine the link. None of these techniques or approaches could have been ideal. But, we believe they are sufficient for us to conclude whether there was discrimination as a result of IRCA.

We developed and used six different methods to obtain information on discriminatory practices and their relationship to the law. On the basis of the data from the first method—the employer survey—the national origin discriminatory practices reported do establish a widespread pattern of discrimination. This pattern existed across a variety of industries in all areas of the Nation and among employers of various sizes. Further, it is more reasonable to conclude that a substantial amount of the discriminatory practices resulted from IRCA rather than not.

The results of the next three methods—the hiring audit, our survey of 300 job applicants in five cities, and our analysis of over 400 discrimination charges filed with OSC—further support our widespread pattern determination. Our final two methods—the analysis of job placement rates before and after IRCA in state employment agencies and an analysis of data on discrimination charges filed with EEOC before and after IRCA—did not detect evidence of a widespread pattern. However, we believe various factors in the data masked the employment discrimination found with our other methods.

The law allows us to include citizenship discrimination in our determination of whether the law resulted in a "widespread pattern of discrimination" only if we can determine such discrimination also resulted in national origin discrimination (see app. IV). However, we could not determine conclusively the extent to which the citizenship discrimination also amounted to national origin discrimination. Therefore, we did not include citizenship discrimination in our determination of a widespread pattern. Our determination rests solely on our findings regarding national origin discrimination. Nonetheless, this chapter reports data on both types of discrimination because we know that the total amount lies between the total for national origin discrimination alone and the total for national origin and citizenship discrimination combined. Our survey results suggest that persons of Hispanic and Asian origins may have been harmed by employers' citizenship discrimination practices.

GAO Measures Showing Discrimination

Employers Report Discriminatory Practices Resulting From the Law

The results of our survey of a random sample of the Nation's employers show that an estimated 891,000 employers (19 percent) of the 4.6 million in the population surveyed reported beginning discriminatory practices because of the law.[1] Of these, an estimated

- 461,000 employers (or 10 percent) discriminated on the basis of a person's foreign appearance or accent (national origin discrimination),[2] and
- 430,000 employers (9 percent) discriminated only on the basis of citizenship status.

Some respondents failed to answer particular questions. To be conservative in our estimates of discrimination practices, we made the assumption that nonrespondents to questions on discrimination did not discriminate. However, it is possible that some of these nonrespondents chose not to answer the questions because they were reluctant to disclose that they engaged in discriminatory practices. To the extent that nonrespondents to individual questions engaged in discriminatory practices, our estimates are understated.

The 461,000 employers reported hiring an estimated 2.9 million employees at their locations during 1988 and the 430,000 employers reported hiring an estimated 3.9 million employees.

In the four highly Hispanic and Asian cities surveyed, many employers reported beginning one or more discriminatory practices: 29 percent in Los Angeles, 21 percent in New York City, 19 percent in Chicago, and 18 percent in Miami. However, the employers who began discriminatory practices were not confined to those cities; for example, 17 percent of the employers in the states that we have grouped as "the rest of the

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[1] All estimates are made at the 95 percent confidence level plus or minus 5 percent unless otherwise noted (see app. III). Also, estimates and percentages for the employer survey have been rounded.

[2] Data include employers who reported only national origin discrimination practices, as well as those who reported both national origin and citizenship discrimination. Furthermore, this includes an estimated 56,000 employers who responded that they did not hire persons who presented Puerto Rican birth certificates. We believe employers responding to this question were reacting to the appearance or accent of the persons and were unwilling to accept a valid work eligibility document.

United States" also reported beginning discriminatory practices. (See fig. 3.1.)

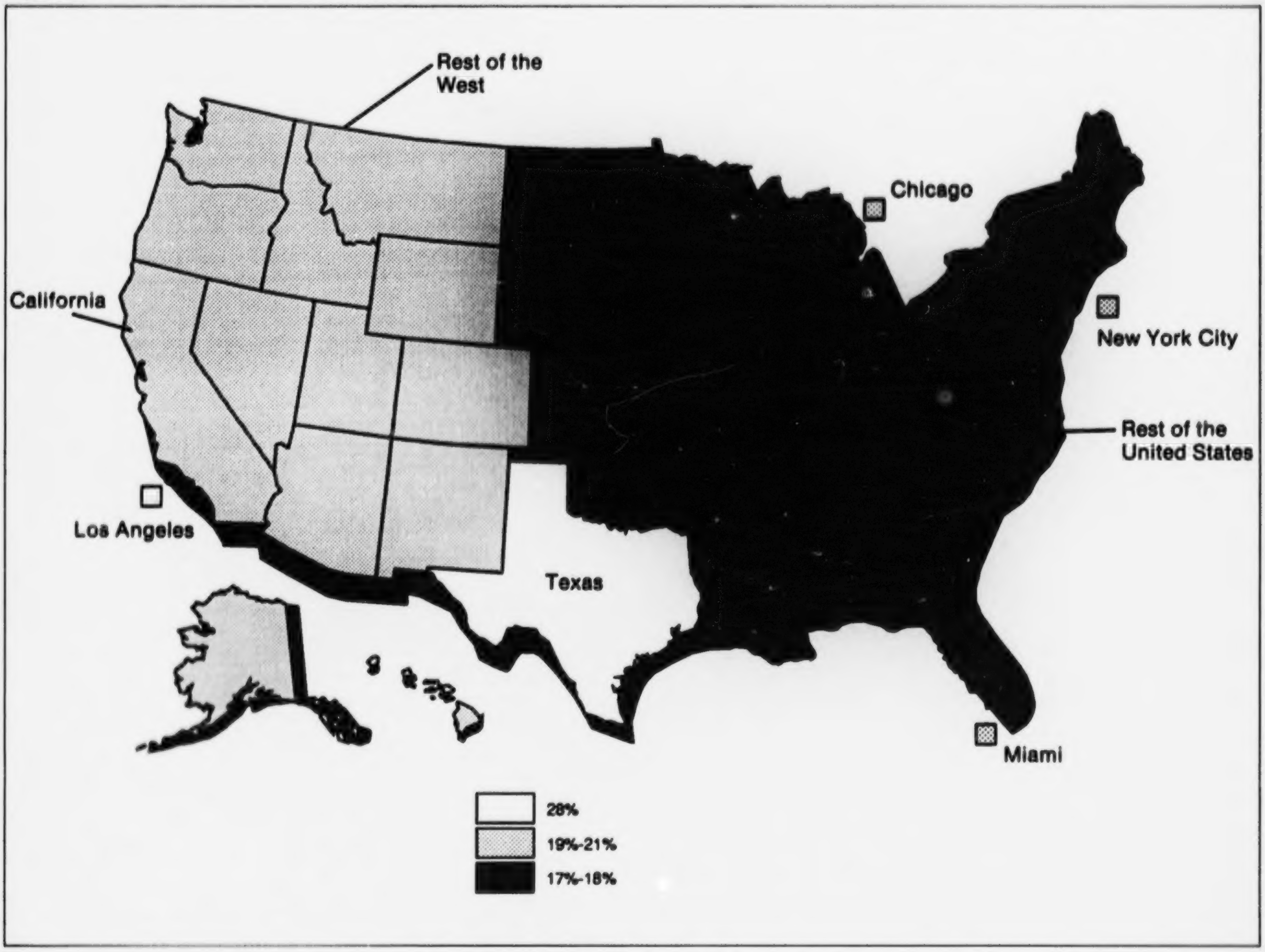
Our estimates of discriminatory practices are based solely on employer responses to the survey questions shown in table 3.1. The table also shows which questions relate to national origin and citizenship discrimination. Because many employers surveyed reported more than one discriminatory practice, the number of employers in the following discussions who adopted different types of discriminatory practices, if totaled, exceed the number (891,000) of employers who reported one or more discriminatory practices.

Table 3.1: GAO's Employer Survey Questions on National Origin and Citizenship Discrimination

Important: Check "yes" only if action was taken as a result of the 1986 immigration law.

Discrimination questions	Type of question
1. Which of the following actions, if any, were taken at this location as a result of your firm's understanding of the 1986 immigration law? (Question 23 on the survey.) Actions taken	
a. Began to hire **only** persons born in the United States	Citizenship
b. Began a practice to not hire persons who have temporary work eligibility documents (for example, temporary resident aliens)	Citizenship
c. Began to examine documents of **only** those **current employees** whose foreign appearance or accent led the firm to suspect they might be unauthorized aliens	National origin
d. Began a practice to not hire **job applicants** whose foreign appearance or accent led the firm to suspect they might be unauthorized aliens	National origin
e. Began a practice to not hire persons who present Puerto Rican birth certificates	National origin
2. Which of the following reasons, if any, explains why I-9 forms were completed for **some** of the employees hired in 1988 but not for others? (Question 4.2.)	National origin
Response #2: Only completed I-9 forms for persons who were suspected of being unauthorized aliens because of foreign appearance or accent	
3. Which of the following reasons, if any, explains why your firm looked at job applicants' work eligibility documents before making a job offer? (Question 7.3.)	National origin
Response #3: Applicant's foreign appearance or accent made the firm suspect the person might be an unauthorized alien	

Figure 3.1: Levels of Discrimination Across the Nation

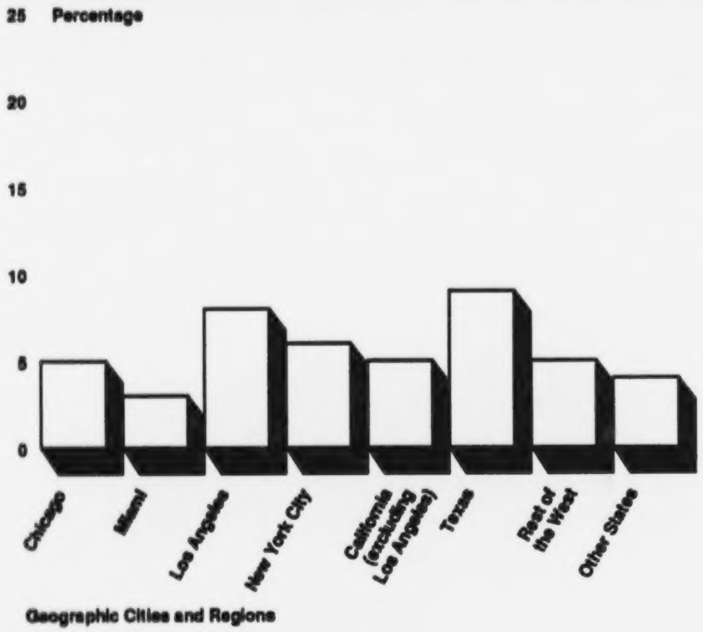

Rest of the West
Chicago
California
New York City
Rest of the United States
Los Angeles
Texas
Miami
28%
19%-21%
17%-18%

Source: GAO Employer Survey, 1989.

National Origin and Citizenship Discrimination Exists in All Surveyed Locations

An estimated 227,000 employers (or 5 percent) of the 4.6 million in the population we surveyed reported that as a result of IRCA, they began a practice to not hire persons because of foreign appearance or accent (national origin discrimination—questions 1d and 1e).[3] This varied from 3 percent in Miami to 9 percent in Texas, as shown in figure 3.2. While we cannot estimate how many job applicants were affected, these employers reported hiring an estimated 1.1 million employees in 1988.[4]

Figure 3.2: Employers Who Said They Did Not Hire Persons Because of Their Foreign Appearance or Accent



Note: Numbers used to generate this figure can be found in table III.3.
Source: GAO Employer Survey, 1989.

An estimated 346,000 employers (8 percent) of the 4.6 million in the population reported that as a result of IRCA, they applied the law's employment verification system only to foreign-looking or foreign-sounding persons (national origin discrimination—questions 1c, 2, and 3). This varied from 6 percent in the "rest of the United States" category (referred to as "Other States") to 16 percent in Los Angeles, as shown in figure 3.3. While we cannot estimate how many job applicants were affected, these employers reported hiring at their location an estimated 2.2 million employees in 1988.

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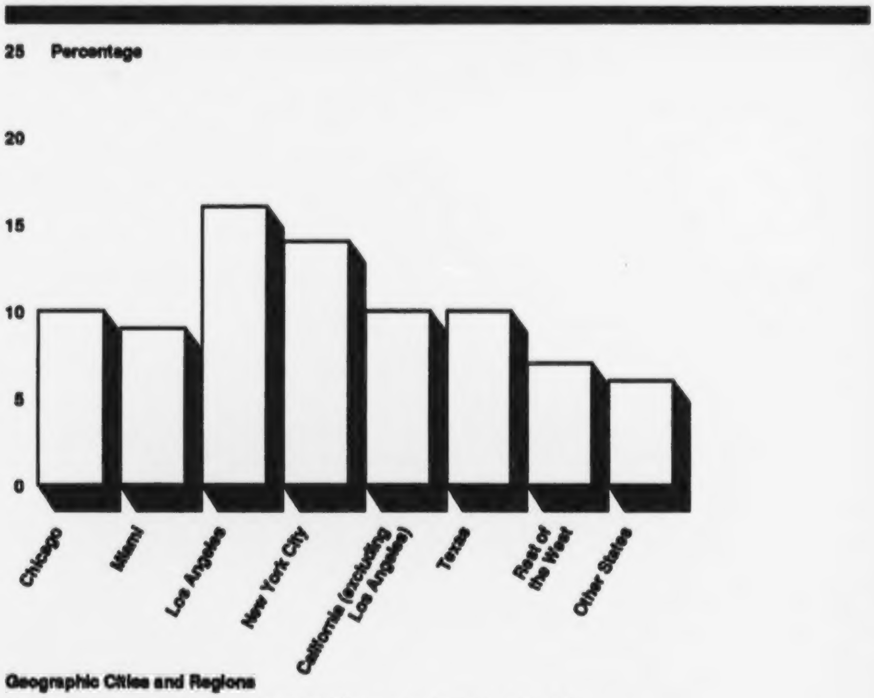
[3] Number and percentages for combined questions are based on the total universe of 4.6 million employers. Percentages for individual questions in appendix II are based on responses for each question, which varied.

[4] All references to "number of employees hired" do not include hires that occurred at locations other than the one to which we addressed our survey.

Selective application of the law's verification provisions is prohibited under IRCA. If foreign-appearing persons are asked to meet requirements that non-foreign-appearing persons are not required to meet, this can result in foreign-appearing authorized workers not being hired. For example, a foreign-appearing worker who, while eligible to work, did not have work eligibility documents readily available for an employer may be denied employment. However, a non-foreign-appearing person, also eligible to work, may be hired without having to present any documents.

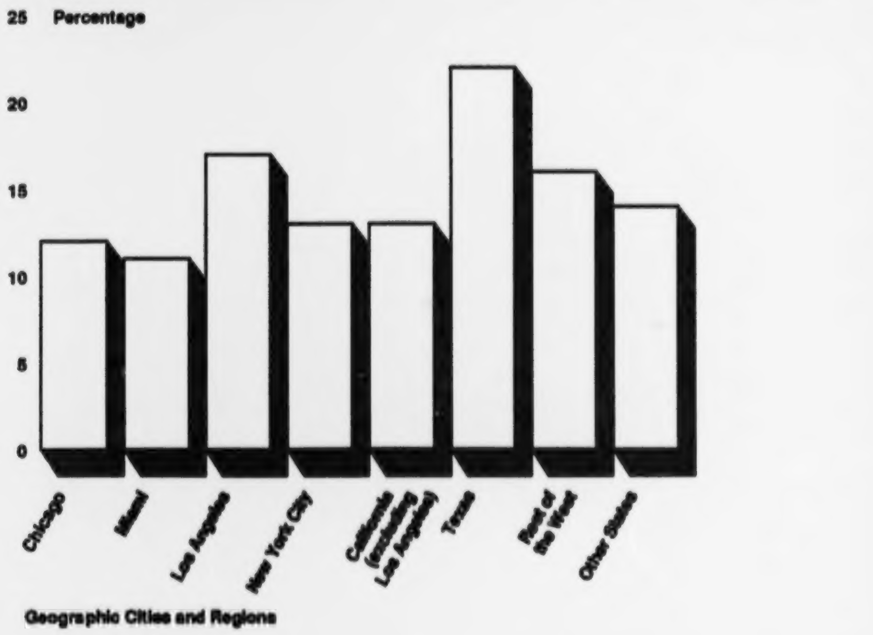
Figure 3.3: Employers Who Said They Applied the Law's Verification System to Only Foreign-Looking or Foreign-Sounding Persons



Note: Numbers used to generate this figure can be found in table III.3.
Source: GAO Employer Survey, 1989.

An estimated 666,000 employers (14 percent) reported they began a practice to (1) hire only persons born in the United States or (2) not hire persons with temporary work eligibility documents (citizenship discrimination—questions 1a and 1b) because of IRCA.[5] This varied from 11 percent in Miami to 22 percent in Texas, as shown in figure 3.4. While we cannot estimate how many job applicants were affected, these employers reported hiring at their surveyed location an estimated 4.9 million employees in 1988.

Figure 3.4: Employers Who Said They Began to Hire Only U.S. Citizens and Not Hire Persons With Temporary Work Eligibility Documents



Note: Numbers used to generate this figure can be found in table III.3.
Source: GAO Employer Survey, 1989.

Effect of Citizenship Discrimination on Hispanics and Asians Uncertain

The survey results suggest that persons of Hispanic and Asian national origins may have been harmed by employers' citizenship discrimination practices. A greater proportion of employers who said they began to hire only persons born in the United States (citizenship discrimination) had no Hispanic or Asian employees. Seventy-six percent of employers said their understanding of IRCA caused them to begin hiring only U.S.-born persons reported having no Hispanic or Asian employees compared to 65 percent of employers who said they had not begun this practice.

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[5] Data include employers who reported only citizenship discrimination practices, as well as those who reported both citizenship and national origin discrimination.

There was a greater difference among employers in heavily Hispanic and Asian areas—California, Texas, Chicago, Miami, and New York City. Fifty-four percent of these employers who said they began to hire only U.S.-born persons as a result of their understanding of IRCA reported having no Hispanic or Asian employees at the location surveyed compared to 38 percent for employers who said they had not begun this practice.

Although these differences are statistically significant, we lack the information, such as the national origin composition of job applicant pools, that would enable us to determine the extent to which citizenship discrimination had the effect of national origin discrimination.[6]

Employers Reporting Discriminatory Practices Were in Various Industries and of Various Sizes

The rate of reported discrimination was about the same in industries employing low, medium, and high numbers of Hispanics and Asians. (See fig. 3.5.)

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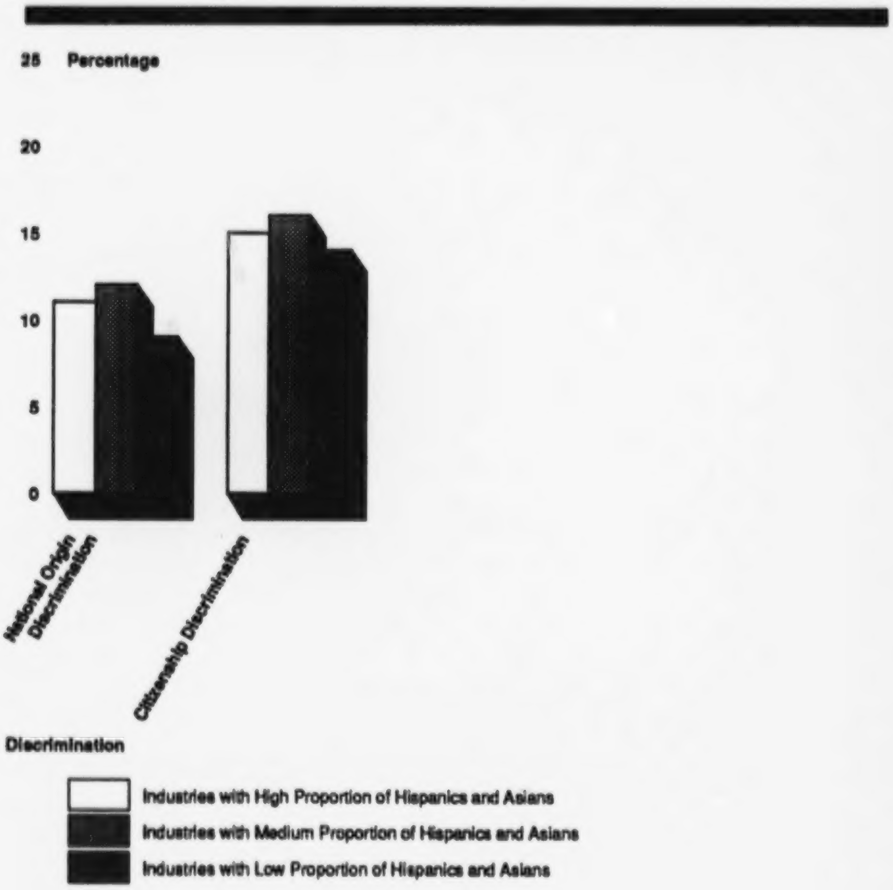
[6] As discussed in chapter 2, our analyses are done at a 95 percent confidence level.

Figure 3.5: Employers With National Origin and Citizenship Discrimination Practices by Levels of Hispanics and Asians



Note: Numbers used to generate this figure can be found in table III.3.
Source: GAO Employer Survey, 1989.

Also, employers of various sizes reported discriminatory practices, but those with 4 to 25 employees (i.e., medium-size employers) reported more discriminatory practices than other employers, as shown in figure 3.6.[7]

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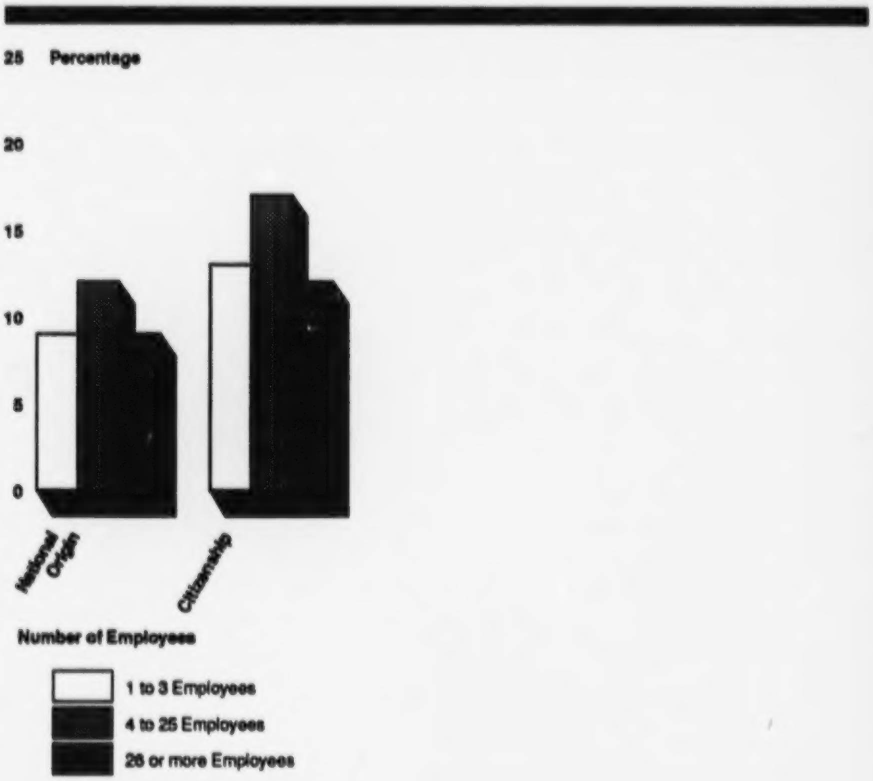
[7] Employers with 4 to 25 employees represented 48 percent of the 4.3 million employer survey population that reported on the number of employees at their locations as of December 31, 1988.

Figure 3.6: Employers With National Origin and Citizenship Discrimination Practices by Number of Employees



Note 1: Numbers used to generate this figure can be found in table III.3.

Note 2: Based on the number of employers reported at their locations, as of December 31, 1988.
Source: GAO Employer Survey, 1989.

Hiring Audit Shows Discrimination Against Hispanics

We conducted a hiring audit in which pairs of testers (a Hispanic and an Anglo in each pair) closely matched on those characteristics that might affect the hiring decision applied for jobs in two major job markets. In all likelihood, prospective employers were not aware that these "applicants" were testers. In this hiring audit, we observed 360 employers' hiring practices in San Diego and Chicago to determine if foreign-looking or foreign-sounding persons were treated differently when seeking employment.

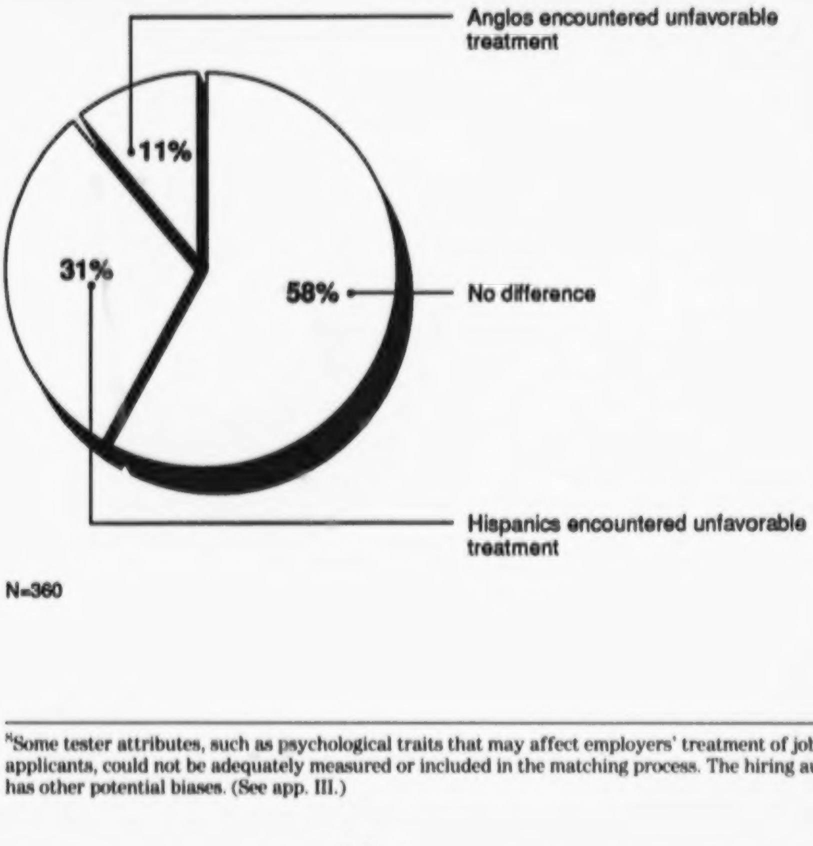
As discussed in chapter 2, we attempted to match the pairs of Hispanic and Anglo testers on those characteristics that might affect the hiring decision.[a] Although we audited only a small sample of employers in both cities, these employers are probably indicative of the urban job market situation currently facing young Hispanics and Anglos, because the positions were entry- level positions selected from a commonly used source.

Hiring Audit Results

Taken in the aggregate, the hiring audit results show a high level of national origin discrimination. We analyzed the testers' progress at three different stages of the hiring process: (1) reaching the job application stage, (2) receiving a job interview, and (3) receiving a job offer.

The hiring audit showed that the Hispanic testers were three times as likely to encounter unfavorable treatment when applying for jobs as were closely matched Anglos. (See fig. 3.7.)

Figure 3.7: Percentage of Audited Employers Who Favored Hispanics or Anglos



N=360

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[a] Some tester attributes, such as psychological traits that may affect employers' treatment of job applicants, could not be adequately measured or included in the matching process. The hiring audit has other potential biases. (See app. III.)

It is unclear why 11 percent of the Anglo testers would encounter unfavorable treatment. Unfavorable treatment can result from systematic behavior, such as discrimination, or from random events, such as an employer's bad mood. If we assume that all 11 percent is due to random events, then we would reduce the proportions for both groups by 11 percent. Subtracting this amount from both groups still leaves a 20 percent difference between Anglo and Hispanic testers. This difference is statistically significant at the .05 level.[9]

The chance of a Hispanic encountering unfavorable treatment was higher in Chicago than in San Diego—33 percent and 29 percent, respectively.[10]

Overall, Anglos received 52 percent more job offers than the Hispanics and 33 percent more interviews, as shown in table 3.2.

Table 3.2: Total Number of Testers Reaching Significant Stages in the Hiring Process

Stages	Anglos	Hispanics	Anglo advantage over Hispanic (%)
Completed an application[a]	342	327	5
Received an interview[a]	229	172	33
Received a job offer[b]	129	85	52

[a] The universe is 360 audits.

[b] The universe is 302 audits.

The following are two examples where only the Anglo tester received a job offer.

- A pair of testers applied for a job advertised in the paper as "counter help" at a downtown lunch service company. Both testers had similar work experience, although neither had experience in direct customer service. The advertisement said to apply in person, so the Hispanic tester went in to apply. When he entered, he told the manager that he would like to apply for the position. The tester reported that the manager studied him and then replied that the position was filled. The Anglo tester followed approximately 2 hours later. He also told the manager that he would like to apply for the position. The manager had the Anglo tester complete a short application, interviewed him for about 3 minutes, and offered him a job immediately.

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[9] The 95 percent confidence interval for the true difference in treatment (or net level of unfavorable treatment) is 0.14 to 0.26.

[10] This is not a statistically significant difference at the .05 level.

- A pair of testers applied for a position with a manufacturer that was listed under "shipping" in the Sunday Chicago Tribune. The advertisement specified that the company wanted a "dependable, hardworking person" and that applicants should contact "Bill." The Hispanic tester called the specified phone number and, after inquiring about the job, was told by Bill that the position was filled. The Anglo tester called 15 minutes later and Bill invited him for an interview for later that day. After a 15-minute interview, the Anglo tester was offered the position. The two testers phoned about the job in the same manner to the same person. The only discernible difference in the phone contact was the Hispanic tester's accent.

Even when testers reached the same stage in the hiring process, they sometimes still experienced different treatment from the prospective employers. For example, although both testers may have initially been offered the same job, the employer sometimes suggested to the Anglo tester that he might be able to advance to another job that paid more money or had greater status.[11] The following case is an example.

- The Hispanic tester filled out an application for a busboy job and had a short interview. The interviewer described the basics of the job and the pay. The Anglo tester filled out the application and had a longer interview during which he was told that he could soon move up to a higher paying bartender position or even a position as a host if he worked well. This is a case where both testers reached the interview stage, but the employer showed clear preferential treatment to the Anglo. This type of preferential treatment is not included in the final results discussed earlier because both testers reached the same stage in the hiring process.

To summarize, the hiring audit shows a high level of national origin discrimination in the two cities. To the extent that the sanctions provision did result in "new" discrimination, we believe it exacerbated an already serious problem of national origin employment discrimination.

In addition, we believe the hiring audit results underestimate discrimination in the general population of employers for four reasons. First, past research shows that employers who advertise for job applicants in newspapers discriminate less than those who do not. Second, our testers stated on their job applications that they were U.S. citizens. Because they revealed their citizenship status early in the hiring process, the potential for citizenship discrimination was diminished. Third, our survey shows that employers with 26 or more employees reported less discrimination than employers with 4 to 25 employees. The employers in our hiring audit were larger than those in our nationwide survey. We estimate that 45 percent of the employers in the hiring audit had 50 or more employees compared to 18 percent of the employers in our survey who had 26 or more. Fourth, the job qualifications of our testers were probably better than the other job applicants who applied for jobs at the same employers. Better qualified job applicants would tend to be more attractive to employers who might otherwise discriminate against less qualified applicants. Specifically, our testers had at least 1 year of college, had 1 to 5 years' work experience, and were all fluent in spoken and written English. In our opinion, we think it is reasonable to assume that, taken together, these four factors resulted in the hiring audit underestimating the amount of discrimination.

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[11] In 14 audits employers treated the Anglo favorably compared to the Hispanic, and in 2 audits the employers treated the Hispanic favorably at the same stage.

National Survey Results on Practice Not to Hire "Foreign-Appearing" Persons

The type of unfavorable treatment we observed during the hiring audit is similar to the behavior described in one of our survey's national origin discrimination questions. Our survey asked if, as a result of their understanding of IRCA, employers "began a practice to not hire job applicants whose foreign appearance or accent led the firm to suspect they might be unauthorized aliens."

On the basis of the survey, we estimated that 209,000 employers (5 percent of the 4.6 million) began this type of discriminatory behavior and specifically attributed the behavior to their understanding of IRCA. Thus, while we cannot determine what factors led to the unfavorable treatment we observed during the hiring audit, we believe that some of the treatment can be attributed to the sanctions provision.

Employers Applied the Law's Verification System Differently for Foreign-Sounding Job Applicants

To determine if employers treated foreign-sounding persons differently, we surveyed 300 job applicants (half said they sounded foreign, half did not) in Chicago, Miami, Dallas, New York, and Los Angeles during July and August 1989.[12] All 300 indicated they had applied in person for a job since January 1, 1989.

The survey showed that employers applied the law's verification system differently for foreign-sounding persons. (See fig. 3.8.)

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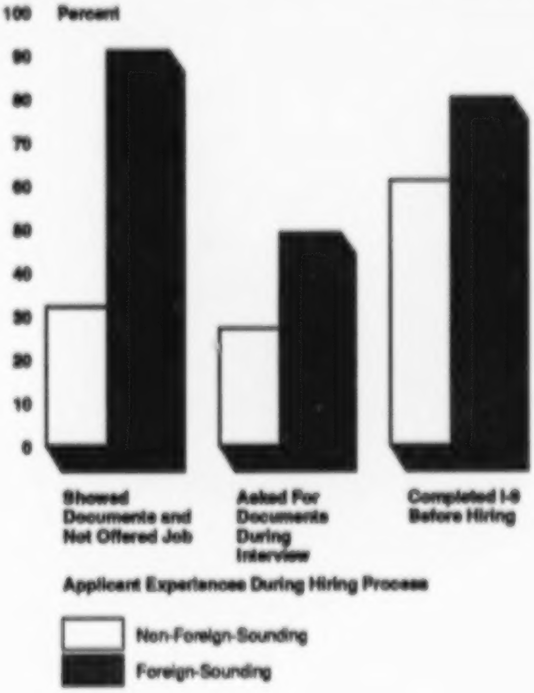
[12] The limitations of the job applicant survey are discussed further in chapter 2.

Figure 3.8: Employers Applied Verification System Differently for Foreign-Sounding Persons



The verification system is unique to IRCA, therefore, any evidence showing that it is applied selectively for foreign-sounding persons constitutes new discrimination. That is, this selective application would not have existed without IRCA.

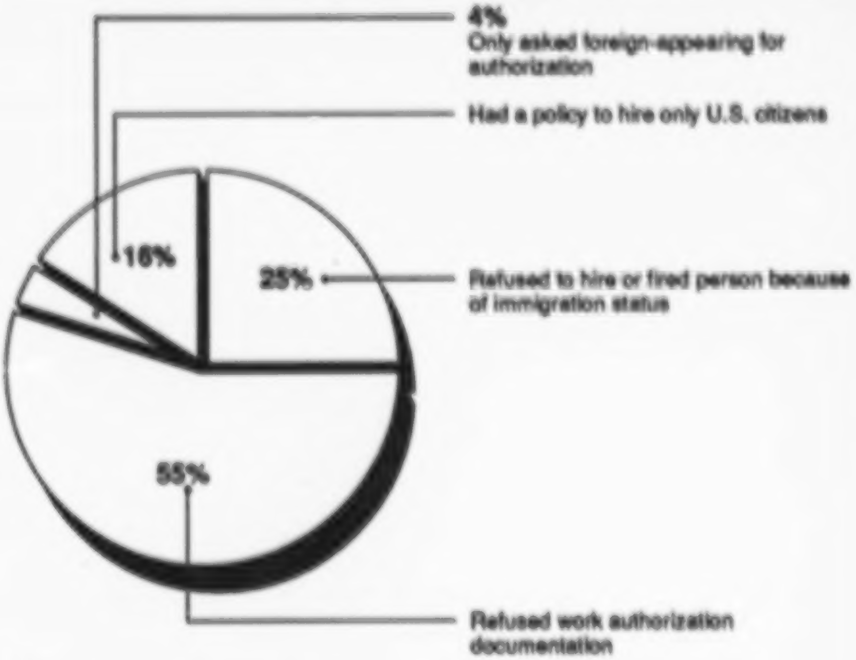
This discriminatory behavior during the application stage may or may not result in discrimination during the hiring decision stage. Sixty-nine percent of the foreign-sounding applicants were offered the job compared to 40 percent of those with no accents. Because of certain sample selection biases, the job applicant survey cannot be used to show whether citizens with no foreign accents were more likely to be hired than foreign-sounding persons. As discussed in chapter 2, we selected our foreign-sounding individuals from organizations providing educational services to temporary resident aliens, and we selected citizens with no foreign accent from state employment agencies. Thus, we were more likely to encounter unemployed persons who had not been offered jobs in our citizen sample than in our foreign-sounding sample. This and other factors we could not control may explain why more of the foreign-sounding aliens reported that they were offered a job than did the citizens.

Analysis of OSC Charges Show About One-Fourth Appear Sanctions-Related

Justice's Office of Special Counsel (OSC) enforces IRCA's antidiscrimination provision. As of October 30, 1989, OSC had received 708 charges. Of these, we analyzed over 415 and found about one-fourth appeared to be related to employer sanctions. This provides additional evidence that some of the discrimination may have resulted from IRCA.

Of the 415 charges reviewed, 114 charges alleged discrimination that appeared to be sanctions-related. The remaining cases did not appear to be sanctions-related or their nature was unclear because of insufficient information. Additional evidence could result in our reclassifying some charges. The most prevalent sanctions-related allegation was discrimination involving employer refusal to accept certain documents. (See fig. 3.9.)

Figure 3.9: Most Common OSC Charge Alleges Employers Refused to Accept Documentation



N-114

An OSC official stated that many charges involved job applicants who apparently were not hired because employers did not understand what was acceptable proof of work authorization under IRCA.

OSC Activities

From the law's enactment until October 30, 1989, OSC had received 708 discrimination charges.[11] As shown in table 3.3, OSC has closed more than half of the cases. For most of the closed cases, no formal finding of discrimination was made.

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[11] Includes at least 81 charges also filed with EEOC.

Table 3.3: Summary of OSC Charges

Classification of charges	Number
Closed	
No discrimination found[a]	435
Settlement reached[b]	83
Total	**518**
Open	
More information needed	74
Under investigation	105
Filed with administrative law judge	11
Total	**190**
Total	**708**

[a] An OSC official reported these charges were not within OSC's jurisdiction, determined charge unfounded, had insufficient data to investigate charge, or the charges were filed too late.

[b] An OSC official reported these included civil monetary penalties against four employers. According to an OSC official, it is OSC's policy not to seek penalties if a charge is settled prior to a complaint being filed before an administrative law judge. The official stated that OSC always seeks monetary penalties if a charge is filed before an administrative law judge.

Source: OSC. We did not verify the accuracy or reliability of the OSC automated file on charges.

OSC is receiving more charges than it initially expected. An OSC official estimated in June 1988 that OSC would receive 310 discrimination charges during fiscal year 1989, but it received 385 charges. As shown in figure 3.10, the number of discrimination charges received by OSC has leveled off recently, but an OSC official expects an increase after a new public service announcement is shown that is designed to increase public awareness of the antidiscrimination provision. A similar public service announcement was aired in May and June of 1988, and the Acting Special Counsel attributed the increase in OSC charges from July to September 1988 to that announcement.

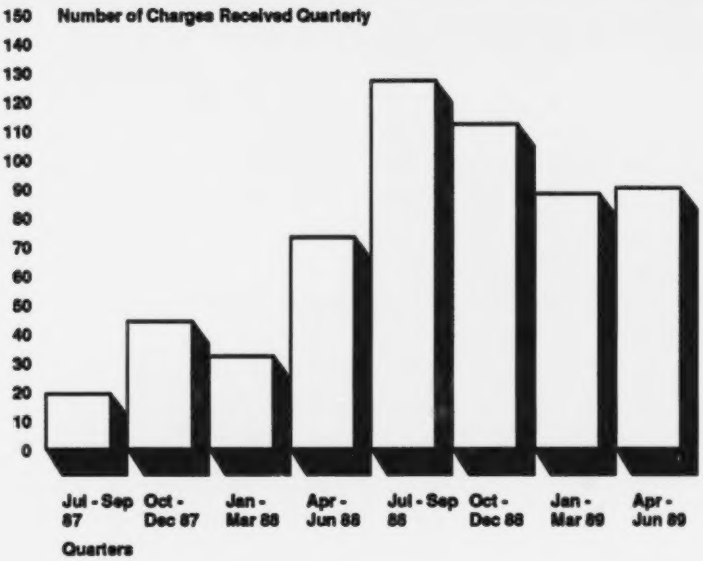
The number of OSC charges is not large relative to the millions of job-seekers who might have been affected by IRCA-related discriminatory practices. In interpreting the OSC data, however, we would make the following observations:

- Not all those harmed by discriminatory practices realize that they have been harmed. For a person to file an OSC charge, they must somehow become convinced that they have been unfairly treated.
- Some job-seekers who might want to take action against perceived discriminatory practices may not be aware that OSC provides an avenue of redress.

- Some of those who think they have cause to file a charge with OSC may be deterred from doing so by the time, trouble, or legal expense involved.
- The absence of a local OSC field office might discourage some potential complainants. Where there is no local OSC representative, a complaint must be filed by telephone or letter.
- Some job-seekers may consider filing a charge but decide not to pursue the matter upon finding another, comparable job.

These factors may explain why the number of complaints is low relative to the number of potential complainants.

Figure 3.10: OSC Charge Data Show Rise Following April/June Public Service Announcement



Source: OSC.

Besides investigating charges, OSC initiates independent investigations. Between March 15, 1988, and September 30, 1989, OSC initiated 66 independent investigations as a result of self-initiated projects and leads from INS and Labor. The majority of these are still under investigation. (See table 3.4.)

Table 3.4: Summary of OSC Independent Investigations March 15, 1988, to September 30, 1989

Classification of investigations	Number
Closed	
No discrimination found	12
Settlement reached	1
Company agreed to change its policy	1
Total closed	14
Under investigation	52
Total	**66**

According to an OSC official, OSC estimates it will do another 75 investigations in fiscal year 1990.

OSC Resources

During fiscal years 1988 and 1989, OSC generally received less funding than it requested. (See table 3.5.)

Table 3.5: OSC Budgets for Fiscal Years 1988 to 1990

Dollars in millions

	Budget dollars		
	1988	1989	1990
OSC submission to Justice	4.2	3.4	3.4
President's budget	4.2	2.8	2.6
Funds appropriated	2.0[a]	2.1	3.5[b]

[a] OSC also had a $300,000 carryover from the previous year.

[b] This includes an additional $1 million and three positions earmarked for publicizing the obligations of employers and the rights of job applicants under IRCA's discrimination provision.

According to an OSC official, the fiscal year 1990 funds of $2.6 million will enable the office to continue its primary mission of investigating charges and to initiate a small number of independent investigations. The Acting Special Counsel believes that independent investigations are important because they have the potential to correct some discrimination and deter more. However, he stated OSC's first obligation is investigating and litigating charges.

Discrimination Charges Referred to OSC by Other Agencies

During compliance inspections, INS and Labor can find possible discriminatory employer practices, which they are supposed to report to OSC. As of June 1989, INS had reported 28 allegations of discrimination to OSC, and Labor, according to an OSC official, had reported 14 such allegations as of September 1989.

OSC and EEOC have referred charges to each other since the passage of IRCA. Officials from these agencies have signed a final memorandum of understanding, which became effective July 1989, specifying procedures for referring charges to each other. Two September 1989 reports showed EEOC had referred about 15 charges to OSC and OSC had referred at least 89 charges to EEOC. Some but not all of these are being investigated by both agencies.

Other Measures Do Not Show IRCA Discrimination

State Employment Service Placement Rates Showed No Significant Differences

We analyzed the rates at which Hispanics and other minorities found jobs through state employment services in three states—Florida, Illinois, and Texas—before and after the passage of IRCA. We found no significant differences in the trend data we collected from these states regarding service job placement rates from 1982 to 1989 for Hispanics and other minorities in relation to whites or blacks. A separate analysis for Tampa, Chicago, and Dallas/Fort Worth also showed no significantly different trends. These results cannot be generalized to other state employment services.

We also found no significant difference in the placement rate for Puerto Ricans in New York City before and after IRCA.

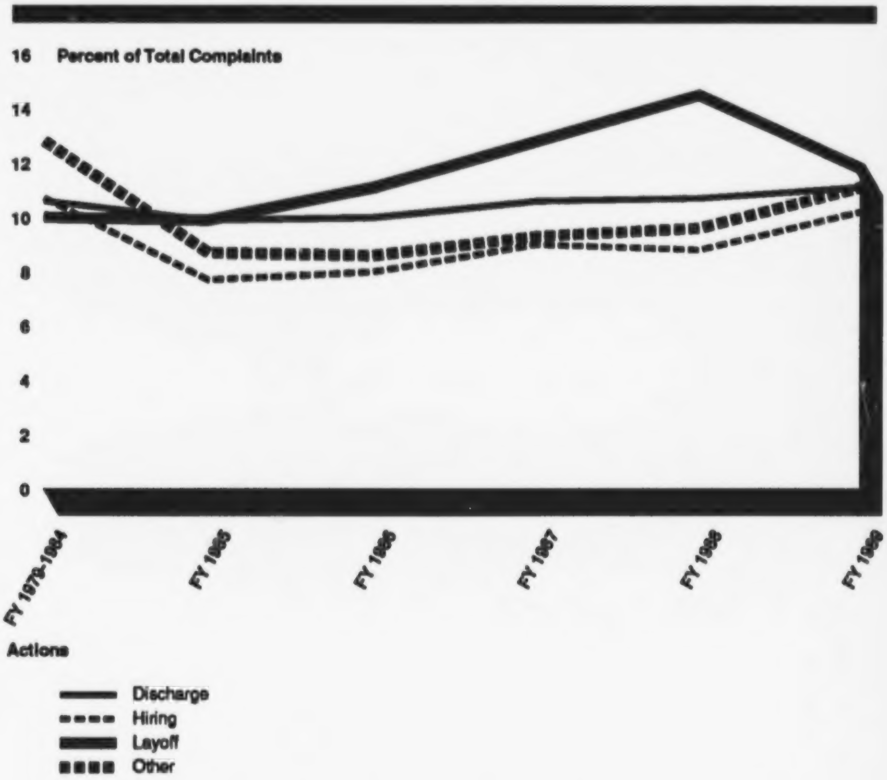
The fact that these analyses do not support our "widespread pattern" determination can be explained, we believe, by noting that employers who make use of state employment services as a source of applicants generally expect to find a high percentage of minorities among those applicants. Thus, as a category of employers, they may be less prone to discriminate than employers generally.

EEOC Time-Series Analysis Showed No Apparent IRCA-Related Trend

We analyzed the flow of national origin discrimination charges into EEOC from fiscal year 1979 to May 1989 to see whether the number of these charges increased following IRCA.

We found no significant increase in national origin charges filed with EEOC after IRCA. Figure 3.11 shows the number of EEOC charges involving employers firing, laying off, or not hiring persons because of their national origin or race from 1979 to May 1989.

Figure 3.11: EEOC Complaints by Employer Action Filed on the Basis of National Origin And/Or Race



Note 1: Due to an inability to obtain the data for each year separately, we combined data for 1979 through 1984.

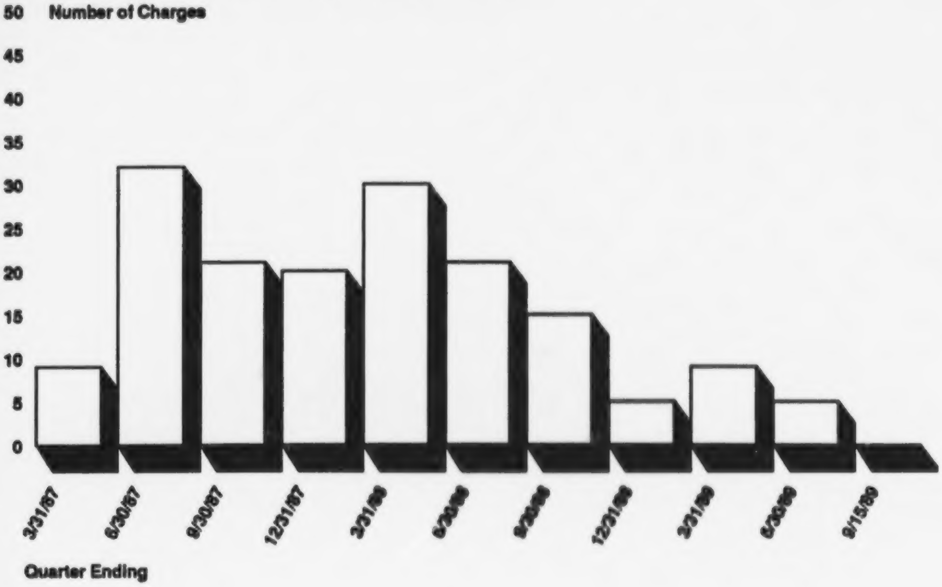
Note 2: Includes only the first 6-month period for 1989.

We do not believe this time series analysis is a sensitive measure of IRCA-caused discrimination. According to an EEOC official, the number of complaints filed with EEOC is dependent upon job applicants and employees knowing or believing that their lack of success in getting a job is the result of discrimination; it is unlikely that the passage of IRCA in itself would have an impact on these levels of knowledge or belief.

Charges Filed With EEOC

As with OSC, not all the EEOC national origin cases are related to IRCA. EEOC provided us with a listing of 168 cases that EEOC believed were possibly IRCA-related. These cases were opened between November 6, 1986, when IRCA was enacted, and September 15, 1989.[14] As figure 3.12 shows, the number of IRCA-related charges being filed with EEOC has declined.

Figure 3.12: EEOC IRCA-Related Charges Decline



Source: EEOC.

Of the 168 EEOC IRCA-related charges, 64 allege employer refusal to accept documents and 59 allege discrimination on the basis of citizenship or immigration status. We did not have sufficient information to classify the remaining 45 IRCA-related charges.

As of September 15, 1989, EEOC had closed 146 of the 168 IRCA-related charges and of those, had settled 58 (40 percent).

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[14] Includes at least 81 charges also filed with OSC.

Several Factors Lead to New Discrimination

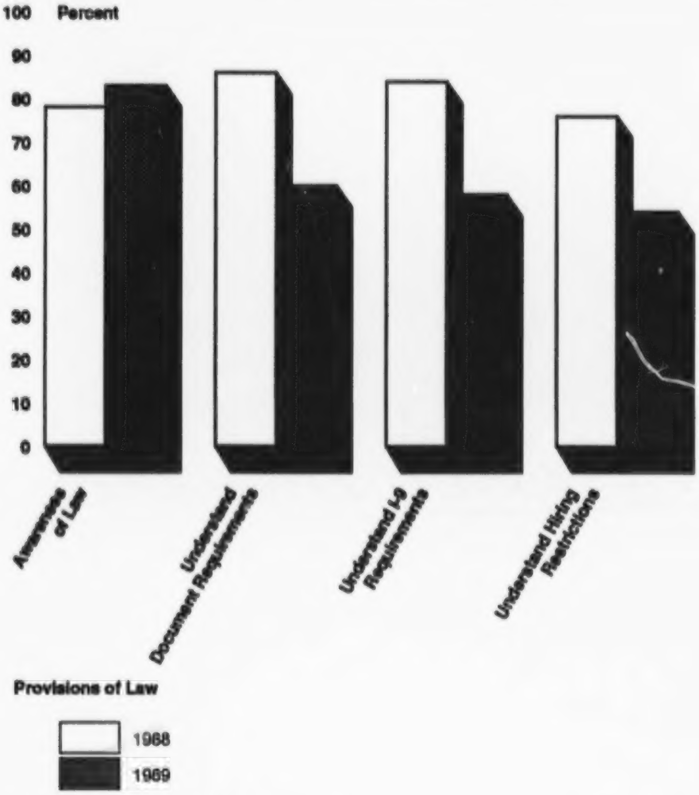
We identified several possible reasons for IRCA-related discrimination:

- a lack of employer understanding of the law's major provisions,
- employer uncertainty in determining work eligibility status, and
- alien use of counterfeit or fraudulent documents that contributed to employer uncertainty about work eligibility status.

Overall Employer Understanding Has Declined

A comparison of our 1988 and 1989 survey results indicates employer awareness of IRCA increased slightly (from 78 to 83 percent) but there has been a significant decrease in the percentage of employers who said they understood IRCA's major provisions. (See fig. 3.13.)

Figure 3.13: Employer Awareness of the Law Increased in 1989 but Understanding of Sanctions Decreased



Source: GAO Employer Survey, 1988 and 1989.

As shown in figure 3.13, the proportion of the employers we surveyed who said they understood the I-9 requirement decreased by 31 percent, and the proportion of employers who said they understood the restrictions on hiring unauthorized workers decreased by 29 percent. According to INS officials, the education program's effectiveness may have been hampered by decreased (1) education resources and (2) emphasis on INS personal visits as a method of educating employers. In June 1988, INS reduced the resources dedicated to education from 50 percent to 25 percent of its investigative resources. According to INS records, between December 1, 1987, and September 30, 1989, INS spent over 950,000 hours on education.

In addition, in both 1988 and 1989 our surveys showed that the smaller the employer the less often they said they were aware of the law and the less they understood IRCA's sanctions provision.

Most Employers Want System Improvements—Uncertainty May Have Led to Employer Discrimination

IRCA allows persons to use any of 17 different documents to establish work eligibility. (See fig. 3.14.) This multiplicity can give rise to confusion and uncertainty in the minds of employers seeking to confirm whether job applicants are eligible to work. To resolve this uncertainty, employers may choose to "err on the safe side," and not hire foreign-looking or foreign-sounding applicants who are actually authorized to work.

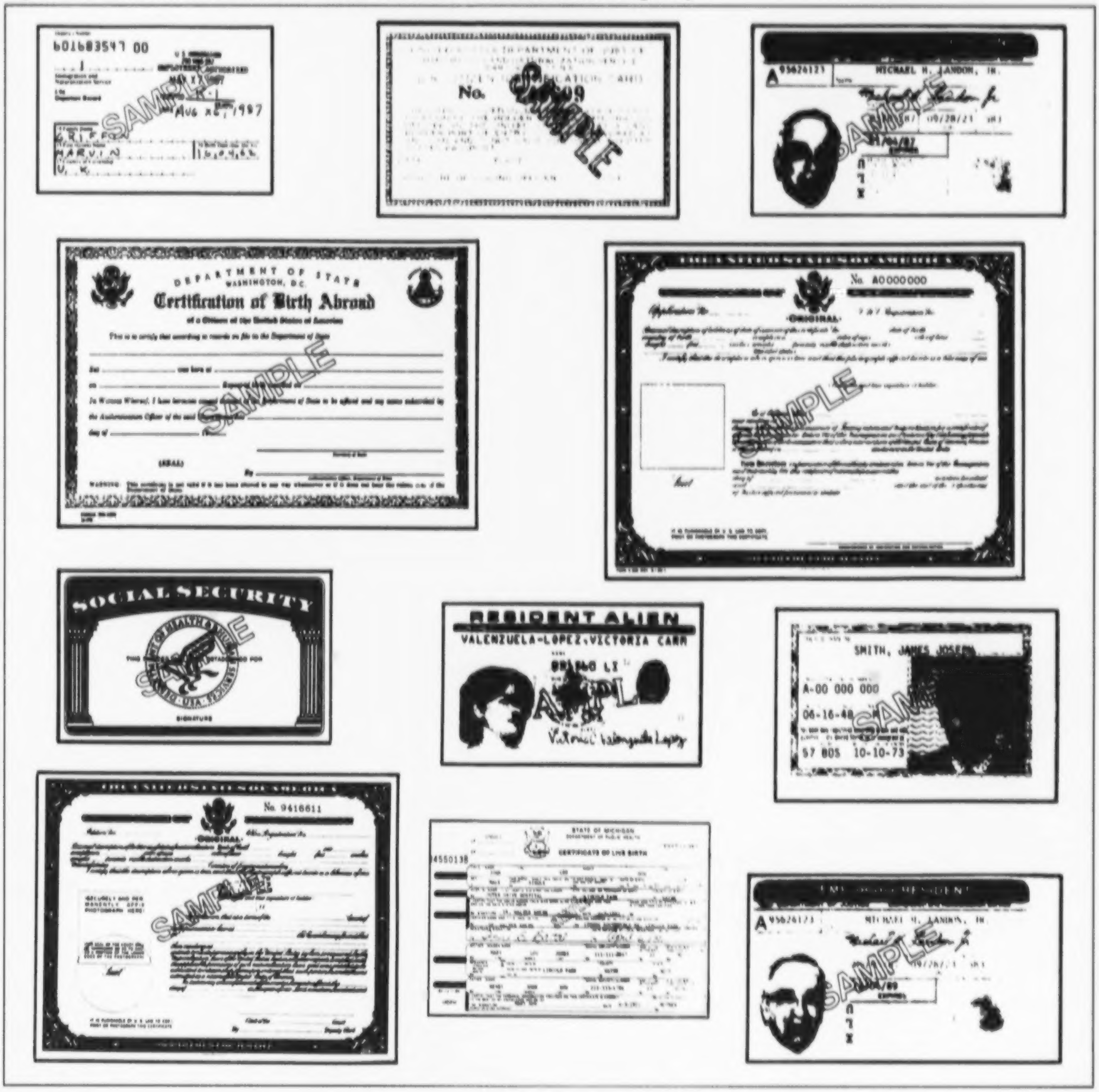
The majority of respondents to our survey indicated the need to improve the verification system. About 78 percent of all employers reported the need to reduce the number of documents or otherwise improve the system. Of these, 77 percent opted for one or more of the following ways to reduce the number of documents:

- Reduce the number of work authorization documents that INS issues.
- Make the documents INS issues the only work eligibility document aliens are permitted to present.
- Make the Social Security card the only work eligibility document persons are permitted to present.

We performed tests of the total responses to see if the desire for improvement was more prevalent among those who said they discriminated than those who said they did not. Our results showed that a greater proportion of employers who discriminated as a result of the law than those who did not discriminate wanted either (1) additional methods to verify work eligibility or (2) to make the Social Security card the only approved document. (See fig. 3.15.) Between 16 and 19 percent more of the employers who discriminated wanted a better verification system than those who said they did not discriminate. These data suggest that some employers may have discriminated because they were uncertain about work eligibility status and chose to err on the safe side.

Next, we tested the relationship between whether or not employers said they understood the law and their reported discriminatory practices. We found a statistically significant relationship in Los Angeles, Texas, and agricultural areas—areas constituting the highest reported discrimination. The percentage of employers who responded that they discriminated was 9 percent higher among employers who said they did not understand the law than among those who said they did.

Figure 3.14: Some of the Documents Persons Can Use to Establish Work Eligibility



601683547 00

EMPLOYMENT AUTHORIZED

AUG 26, 1987

MARVIN

SAMPLE

No.

SAMPLE

A 95624121

MICHAEL H. LANDON, JR.

SAMPLE

DEPARTMENT OF STATE
WASHINGTON, D.C.
Certification of Birth Abroad

(SEAL)

SAMPLE

THE UNITED STATES OF AMERICA

No. A0000000

ORIGINAL

SAMPLE

SOCIAL SECURITY

SIGNATURE

SAMPLE

RESIDENT ALIEN

VALENZUELA-LOPEZ,VICTORIA CARM

SAMPLE

SMITH, JAMES JOSEPH

A-00 000 000

06-16-48

57 805 10-10-73

SAMPLE

THE UNITED STATES OF AMERICA

No. 9416611

ORIGINAL

SAMPLE

STATE OF MICHIGAN

CERTIFICATE OF LIVE BIRTH

A 95624121

MICHAEL H. LANDON, JR.

SAMPLE

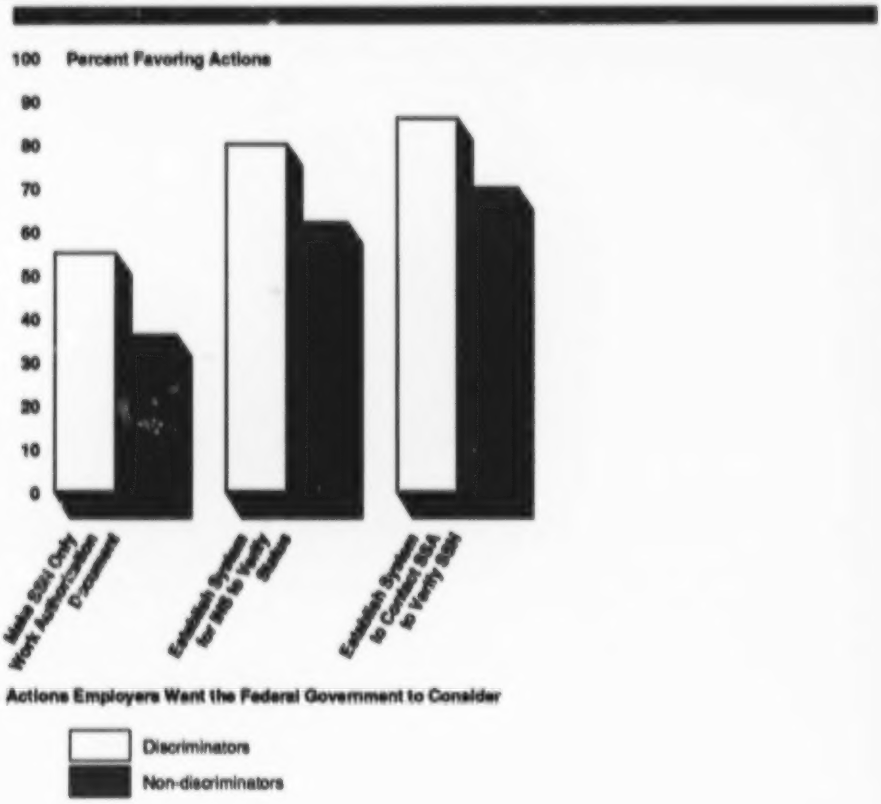


Figure 3.15: Employers Who Discriminate Favor Improvements to the Verification System More Than Nondiscriminators

Note: Numbers used to generate this figure can be found in table III.3.
Source: GAO Employer Survey, 1989.

There are millions of aliens and citizens in the workforce who must have a Social Security number to report income earned from work. If parents have children they claim as dependents on their tax return, they must list the children's Social Security number if they are age 2 or older.

In December 1988, the Secretary of Health and Human Services sent a report to Congress pursuant to Section 101(e) of IRCA that discussed additional work eligibility verification methods for employers.[15] The report concluded that a system to allow employers to validate job applicants' Social Security numbers would have limited effectiveness in preventing unauthorized aliens from finding work. The primary reason for this conclusion was that because there is no photograph on the cards, no means would exist to ensure that the job applicant presenting a valid Social Security Account Number (SSN) card is the person to whom it was issued.

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[15] A Social Security Number Validation System: Feasibility, Costs, and Privacy Considerations. Report of the Department of Health and Human Services Social Security Administration. Pursuant to Section (101)(e) of P.L. 99-603, The Immigration Reform and Control Act of 1986, November 1988.

If an SSN validation system is desirable, the Secretary suggested an alternative of prevalidating the SSNs on state driver's licenses. The Secretary said that all state driver's licenses include a photograph and 29 states also show the driver's SSN. The report concluded that:

> "SSA currently validates SSNs in State driver's license records for some States at their request and, if the States agreed, could validate SSNs at the time people initially applied for driver's licenses. Such a procedure would positively link the SSN to the job applicant through the picture on the driver's license, be less costly than a telephone validation system, and avoid placing the burden of validating SSNs on employers."

According to the Department of Transportation, an estimated 163 million persons had driver's licenses as of December 31, 1988.

Fraudulent and Counterfeit Documents Used by Aliens Contribute to Employers' Uncertainty About Work Status

In verifying whether job applicants are authorized to work in the United States, employers should review documents presented by the applicants. The verification, in effect, requires employers to judge whether or not the documents presented are obviously fraudulent or counterfeit.[16]

A review of INS apprehensions of employed aliens during August and September 1989 suggests that counterfeit or fraudulent documents are common, adding to the uncertainty faced by employers in determining worker eligibility status. INS agents reviewed 110 alien registration cards and 166 Social Security cards and found the following:

- Ninety-six percent (106 of 110) of the INS-issued alien registration cards were determined to be counterfeit and 3 percent were fraudulent. The validity of one card could not be determined.
- Seventy-one percent (117 of 166) of the Social Security cards were determined to be counterfeit and 10 percent (16 of 166) were fraudulent cards.

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[16] A counterfeit document is one that is illegally manufactured, such as a fake Social Security card. A fraudulently used document is a genuine document that is illegally used (e.g., an alien using another person's valid Social Security card) with or without alterations.

The alien registration card and the Social Security card were the most common work eligibility documents. Together, they represented 76 percent of all the work eligibility documents that aliens used to complete the I-9 verification.

In addition, for the 222 apprehended unauthorized aliens who completed I-9 forms, 127 falsely claimed to be permanent residents, 39 claimed to be lawfully authorized to work, and 12 claimed to be citizens. In the remaining 44 cases, the aliens did not indicate their alien or citizenship status on the I-9.

Some employers who responded to our survey also commented on the counterfeit document issue and the law's eligibility verification system:

> "The '86 Immigration law is unworkable. Documents are easily counterfeited . . . the going price for a set of counterfeit documents that includes a SS [social security] card, INS work card and an Arizona driver's license is $300-$500."

> "There are definitely too many different combinations of documents that must be reviewed by the employer."

Efforts to Reduce IRCA-Related Discrimination Are Underway

INS has initiated efforts to reduce the number of documents employers can use to verify the work eligibility of job applicants and employees. OSC, INS, and other agencies are also engaged in efforts to educate employers on the anti-antidiscrimination provision of IRCA. We believe these efforts need to be intensified if IRCA is to work properly.

The INS Decision to Reduce the Number of Documents Should Help Reduce Employer Uncertainty

As of February 1990, INS planned to standardize INS-issued work eligibility documents and eventually reduce from 10 to 2 the number of cards it issues.[17] However, according to INS officials, final implementation will not occur before the mid-1990s, and these planned time frames are contingent upon receiving additional funding, personnel, and data processing support. INS plans for the new cards to have counterfeit-resistant features and an expiration date.

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[17] In March 1988, we reported that there were too many different work eligibility documents to realistically expect employers to judge their genuineness. SSA officials are trained to detect fraudulent documents, but the Nation's employers are untrained in document verification. We recommended that the Attorney General consider reducing the number of employment eligibility documents that could be used. One option was to make the Social Security card the only work eligibility document. (Immigration Control: A New Role For the Social Security Card, GAO/HRD-88-4, Mar. 16, 1988.)

The first new card is being issued to (1) all new permanent resident aliens, (2) those permanent resident aliens who have lost their cards, and (3) the children of permanent resident aliens when they re-register with INS at the age of 14. Approximately 2 million of these cards are issued annually. Beginning in fiscal year 1992, INS plans to begin replacing the estimated 20 million previously issued cards.

The second new card will be issued to (1) nonpermanent aliens who are authorized to work and (2) nonpermanent aliens whose previously issued cards expired and who apply for renewal. INS also plans to recall and replace previously issued cards without expiration dates. INS expects to issue 1 million of these cards annually. This new card will replace several INS-issued documents that, according to INS officials, are not fraud-resistant, do not include a photograph, and are not easily verifiable.

Antidiscrimination Education Activities

Although IRCA does not require public education on the law's antidiscrimination provision, OSC, INS, EEOC, and Labor have taken the initiative to educate the public about this IRCA provision. According to officials from these agencies, they have initiated both independent and joint programs and have been participating, along with the Small Business Administration (SBA), on a task force to discuss, plan, coordinate, and distribute educational material on the law's discrimination protections. The agencies have funded initiatives within their existing budgets. The initiatives are directed toward three groups: (1) persons who may have been discriminated against (to make them aware of their rights under IRCA), (2) persons at risk of being discriminated against, and (3) employers (to prevent or correct possible discriminatory practices).

Since fiscal year 1987, OSC and INS have distributed information handbooks to various agencies, employees, and employers and spoken before employer and employee rights groups about IRCA's antidiscrimination provision.[18] As the lead agencies, OSC and INS officials told us that their joint fiscal year 1989 initiatives included (1) a series of new public service announcements, (2) printing of 400,000 posters entitled "Important Notice Concerning Immigration-Related Unfair Employment Practices" in eight languages, (3) a "What You Should Know" informational poster targeted towards employers, (4) distribution of millions of copies of a brochure entitled Your Job and Your Rights in Spanish and English, and (5) newspaper advertisements in U.S.A Today and The Washington Post. In addition, EEOC, Labor, and SBA are informing the public by distributing INS and OSC educational materials.

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[18] More information on OSC's and INS' educational activities are in GAO's second annual report, Immigration Reform: Status of Implementing Employer Sanctions After Second Year (GAO/GGD-89-16, Nov. 15, 1988.)

In March 1989, the Attorney General acted on our recommendation regarding the development of a coordinated strategy for education by authorizing an antidiscrimination Task Force. Members of the Task Force include OSC, INS, EEOC, Labor, and SBA. According to the Acting Special Counsel, the Task Force has (1) improved communications among these agencies on the initiatives that each one is undertaking, thus eliminating possible duplication; and (2) increased the number of agencies that distribute various educational materials.

According to an OSC official, OSC's other fiscal year 1989 initiatives include (1) developing an illustrated magazine on IRCA; (2) preparing articles for newsletters published by the Department of Defense, Catholic Charities, and other interested organizations; and (3) signing agreements with state and local human rights agencies to allow each agency to receive the other's charges. According to the Acting Special Counsel, OSC's antidiscrimination outreach activities focus primarily on potential victims of discrimination, but OSC plans to direct future efforts toward employers.

An EEOC official said that EEOC's independent initiatives include: (1) speaking before conferences of state fair employment agencies, bar associations, and employer and civil rights groups; (2) issuing three policy guidance memorandums to its district offices on IRCA and its relationship to title VII of the 1964 Civil Rights Act; and (3) developing its own employee and employer booklets about unlawful discrimination under IRCA and title VII.

According to an INS official, INS focuses on educating employers on IRCA's antidiscrimination provision. INS officials stated their activities include: (1) informing employers in person, by telephone, or mail about the provision; (2) establishing an 800 phone number with an antidiscrimination message; and (3) distributing 1-page flyers entitled "What Employers Should Know" and "Are You Facing Discrimination in Employment?" to employers and interested organizations. In addition, INS has hired a firm to develop and produce both electronic and printed antidiscrimination advertisements, and distributes Your Job and Your Rights and other IRCA information packets nationwide. According to an INS official, INS district offices have produced public service announcements with local spokespersons, held antidiscrimination awareness meetings, and have done local advertising such as billboards with the antidiscrimination message.

In addition, INS has held meetings in cities across the country and made announcements in the newspapers, on television, and on the radio to educate employers about the sanctions provision. According to our survey results, INS' education media campaign was effective. Employers who responded that their familiarity with the law was increased as a result of INS' campaign were also more likely to respond that they were clear about the law's documentation requirements.

Labor and SBA officials said they pass along IRCA information during their visits to employers. Labor activities involve distributing its 1987 handbook, Information For Employees And Job Applicants Under The New Immigration Law, the INS Handbook for Employers, OSC's and INS' Your Job and Your Rights, and the OSC poster "What Employers Should Know." SBA distributes IRCA information through its training and counseling programs provided to small businesses.

Funding

INS, OSC, and EEOC officials reported spending about $728,000 on antidiscrimination education during fiscal year 1989. INS funded the majority of joint projects through its Employer Labor Relations program. OSC, EEOC, and Labor have funded their individual initiatives within their authorized budgets.

During fiscal year 1989, INS spent about $646,000[10] to print posters and pamphlets, obtain an exhibition booth to use at conferences, develop new public service announcements, and travel. OSC spent approximately $70,000 to print publications and for travel. OSC officials stated that their attorneys do public outreach while investigating individual charges. An EEOC official stated EEOC spent about $12,000 to print its employer and employee publications and has incurred unspecified costs relevant to speaking engagements and conference time devoted to IRCA. Labor and SBA officials told us they do not record specific costs for antidiscrimination materials. Funding for their education projects comes from existing authorized budgets.

As discussed previously, OSC's 1990 budget includes $1 million and three positions for publicizing employer obligations and job applicant rights under IRCA's discrimination provision. INS estimates it will spend $894,000 to educate employees and employers about the antidiscrimination provision, as well as to educate the agricultural community.

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[10] This includes $100,000 for printing costs received from OSC.

Conclusions

The employer survey results are sufficient to conclude that a widespread pattern of discrimination has resulted against eligible workers. On the basis of the available information, we believe that it is more reasonable to conclude that a substantial amount of these discriminatory practices resulted from IRCA rather than not. Our determination is based solely on the findings regarding national origin discrimination.

The results of the employer survey meet the criteria in the law for a "widespread pattern of discrimination." We estimate that 461,000 employers (10 percent) of the 4.6 million employers in the survey population nationwide began national origin discriminatory practices as a result of the sanctions provision. This meets the criterion in the legislative history of more than "just a few isolated cases of discrimination." The employers who reported these practices were in a variety of industries and areas of the Nation and included firms of various sizes. This meets the criterion of "a serious pattern of discrimination."

The survey results also meet the criterion in the law and legislative history to measure only "new" discrimination resulting "solely from the implementation of" the sanctions provision. First, the employers who reported discriminating in actual hiring attributed these practices to IRCA. Second, employers reported applying IRCA's work eligibility verification process in a discriminatory manner. This practice would not have occurred without IRCA. Thus, both practices meet the criterion in the law of measuring discrimination caused "solely from the implementation of" IRCA's sanctions provision.

The results of the employer survey also meet the criterion in IRCA to measure discrimination against "eligible workers . . ." We estimate 227,000 employers in our survey reported that they began a practice of not hiring foreign-appearing or foreign-sounding job applicants. While we cannot estimate from the survey how many of these job applicants were affected or how many of these were eligible workers, the employers we surveyed hired an estimated 1.1 million employees in 1988.

The results of our hiring audit were consistent with our survey results. For example, the Anglo testers received 52 percent more job offers than the Hispanic testers with whom they were paired. Although we did the hiring audit at a relatively small sample of employers in two cities, the results tend to confirm our national survey finding that a large number of eligible workers were probably affected by the type of behavior we observed during the audit.

Although the law requires only our determination as to the existence of a widespread pattern of national origin discrimination, we also noted that another 430,000 employers began citizenship discrimination as a result of the law. While we could not measure the effects of citizenship discrimination, these practices are also illegal and have the potential to harm persons, particularly those of Hispanic and Asian origins.

Congress should implement the expedited consideration of the sanctions provision and has several options in the face of our "widespread pattern of discrimination" determination. It can leave the law as is for the present time, repeal the sanctions provision, or leave the provision in place and amend IRCA in other ways to reduce the extent of discrimination.

The decision Congress must make is difficult because of IRCA's mixed results. There has been discrimination. Ten percent of employers surveyed reported national origin discrimination as a result of the law, but 90 percent did not; thus, IRCA-related discrimination is serious but not pervasive. And the sanctions provision at this time appears to have slowed illegal immigration to the United States. (See ch. 6.)

We identified three possible reasons why employers discriminated as a result of the implementation of the sanctions provision: (1) employer lack of understanding of the law's major provisions; (2) employer confusion and uncertainty on how to determine eligibility; and (3) alien use of counterfeit or fraudulent documents, which contributed to employer uncertainty over how to verify eligibility.

In summary, much of the reported discrimination appears to come from employers who are confused about how to comply with IRCA's verification requirements. Thus, it is likely that the widespread pattern of discrimination we found could be reduced by (1) increasing employer understanding through effective education efforts; (2) reducing the number of work eligibility documents; (3) making the documents harder to counterfeit, thereby reducing document fraud; and (4) requiring the new documents of all members of the workforce.

Need to Intensify Education Efforts

In our second annual report, we recommended that the Attorney General develop a coordinated strategy to better educate the public about the law's antidiscrimination provision. The Attorney General agreed, and increased educational activities. Also, Congress appropriated $1 million to OSC for antidiscrimination education activities in fiscal year 1990 and enacted other related actions that should help to reduce employer confusion.

These are positive steps that should produce some beneficial results. Those results can be enhanced by better targeting intensified educational and antidiscrimination efforts at those employers that our analysis indicates are more likely to discriminate (i.e., medium-size employers and employers in areas of high Hispanic and Asian populations).

Verification System Should Be Improved If Sanctions Are Retained

While education will help, fundamental reform is needed in IRCA's current verification system if IRCA sanctions-related discrimination is to be reduced. These reforms must result in reducing the number of eligibility documents presently recognized.

Reducing the number of eligibility documents will raise many concerns—ranging from civil liberty issues to cost and logistics issues. Congress will have to consider carefully the tradeoffs it is willing to make in assuring that jobs are reserved for citizens and legal aliens against the aim of reducing discrimination in the process. Both objectives are important.

To be optimally effective in reducing discrimination, the solution must (1) greatly reduce the number of work eligibility documents, (2) make the documents harder to counterfeit and reduce document fraud, and (3) apply to all members of the workforce.

Such a system should reduce IRCA-related discrimination. It would make it easier for employers to comply with the law. It would relieve employer concerns about counterfeit documents. And it would reduce employer confusion resulting from the many possible documents that can presently be used for verifying work eligibility.

Indeed, Congress anticipated that the verification system might need to be improved when it passed IRCA in 1986. As discussed in chapter 1, section 101(a)(1) states that the President can propose improvements to the employment verification system if necessary. The section specifies that any improvement to the verification system should

- yield reliable determinations of employment eligibility and identity,
- be counterfeit-resistant,
- be used for employment verification only,
- protect individual privacy, and
- not be used for law enforcement purposes unrelated to IRCA.

Congress also anticipated that one alternative for improving the verification system might be to use Social Security account number cards as a primary identifier. The section specifies that the President give Congress a year's notice before implementing this change. It also specifies that any changes requiring an individual to present a new employment verification card or providing for a telephone verification system require 2 years' notice. Either or both of these changes would require congressional approval.

The five characteristics listed in section 101(a)(1) of IRCA are consistent with the types of changes we believe are necessary to the verification system to reduce discrimination. Increased reliability would make it easier for employers to comply with the law. Counterfeit-resistance would increase employer confidence that documents being presented were genuine. Privacy guarantees and prohibitions against using the employment verification system for other uses would reduce fears among both employers and prospective employees of unjustified government intrusion into their lives. Thus, when combined with fewer work eligibility documents and universal application throughout the workforce, such improvements to the verification system should both reduce discrimination and increase the effectiveness of sanctions.

Reduce the Number of Work Eligibility Documents

Feasible alternatives to reduce the number of work eligibility documents range from INS' current plan to reduce from 10 to 2 the types of cards it issues to a plan that would require a single eligibility card for both aliens and citizens—such as the Social Security card, or a state driver's license or state identity card with the Social Security number on it.

Many would argue that we already have an almost universal identifier in the country—the Social Security number. To report income earned from work, a person must have a Social Security number. If parents have children they claim as dependents on their tax returns, they must list the children's Social Security numbers if they are age 2 or older. Many states use the Social Security number as the identifier on their residents' drivers' licenses.

We analyzed the Social Security card option in our 1988 report. Using a single card would reduce employer confusion and make it easier for employers to comply with the law's verification requirements without discriminating. For example, if the Social Security card were the only approved document, employers would be precluded from requiring foreign-appearing U.S. citizens to present an INS card before they could be hired. This alternative would also reduce unauthorized alien use of counterfeit versions of the numerous other documents presently allowed under IRCA (e.g., birth certificate, INS-issued cards). One shortcoming of the alternative, however, is that there are millions of aliens who have temporary work eligibility status who would have to be issued Social Security cards with an expiration date and then reissued new cards if their temporary status is renewed.

If an SSN validation system is desirable, the Secretary, HHS, suggested an option to help ensure that the job applicant presenting a document is the person to whom it was issued. The Secretary suggested that since all state driver's licenses contain a photograph, SSA could validate the Social Security numbers of people who apply for driver's licenses and the validated number could be put on the license. Such a system, if expanded to also include persons who apply for driver's license renewal or other state identity cards, would cover the majority of the Nation's workforce in a relatively few years. To the degree that the state-issued identity documents incorporated counterfeit-resistant features, the effectiveness of the system would be further enhanced. As recognized by the Secretary, however, the states would have to agree to assume the burden.

Regardless of which specific card or cards might be used, the questions of how to issue them, where, and over what time period must be answered. One way, possible for the 163 million people who have driver's licenses, would be to do so in conjunction with their driver's license renewal. A system could be established whereby the federal government would work in conjunction with state motor vehicle agencies to provide improved worker verification identification concurrently with a person's renewal of his or her driver's license or state identity card. Cost reimbursements and logistics of the process could be worked out.

Should Congress opt for a single card system, it should assure that the system will not be administered by law enforcement agencies. There would be a temptation for misuse of information if any law enforcement agency controls the computer system and information going into it to assure the validity of the issued cards.

Make the Documents More Counterfeit-Resistant and Reduce Document Fraud

Wholly apart from their impact on discrimination, the prevalence of counterfeit and fraudulently obtained documents threatens the security of IRCA's verification system for prohibiting unauthorized alien employment. INS apprehensions during a 2-month period in the summer of 1989 showed that unauthorized aliens commonly possess counterfeit or fraudulently obtained Social Security cards or INS-issued documents.

The alternatives for making work eligibility cards harder to counterfeit and reducing document fraud by unauthorized aliens range from INS' current plan to improve the counterfeit-resistant features of its new cards to making the Social Security card more counterfeit-resistant.

To increase employer confidence, a new Social Security card could be devised with state-of-the-art counterfeit-resistant features such as those discussed in our 1988 report. To preclude unauthorized aliens from using counterfeit Social Security cards they presently have, the new card could be made to look much different from the current card. To help ensure that unauthorized aliens do not fraudulently obtain the new card, SSA would have to take reasonable steps to verify that the documents persons use to apply for the new card (e.g., birth certificates) are valid.

If sanctions are retained, we believe that the President should initiate proposals and Congress should consider legislation to make the documents more counterfeit-resistant. Any changes should take into account the privacy concerns reflected in the law as well as cost considerations.

Apply Any New Identification to All Members of the Workforce

The alternatives for applying any new or improved work eligibility identification to the millions of eligible aliens and citizens in the workforce range from INS' current practice to generally issue its new cards to only new temporary and permanent resident aliens, to having SSA issue a new counterfeit-resistant Social Security card to all eligible aliens and citizens.

If SSA were to begin issuing new counterfeit-resistant Social Security cards to only new applicants, little would be accomplished in reducing employers' confusion and uncertainty regarding how to determine work eligibility due to the large number of old cards still in use. For the cards to be optimally effective in reducing IRCA-related discrimination, all members of the workforce (citizens and aliens) would have to receive the new cards.

INS plans to replace over 20 million old INS cards with the new cards by the mid-1990s. However, this schedule is dependent on additional funding and personnel. Unless this process is expedited, little will be accomplished in the short term to reduce employer confusion and uncertainty about determining work eligibility using INS documents.

The trade-off along the range of alternatives is between effectiveness in reducing IRCA-related discrimination and increased government costs and regulation. The more members of the affected workforce that receive an improved card, the more effectively discrimination will be reduced. However, this will also result in greater costs and in increased perception of government intrusiveness.

Implementation Costs Could Affect the Feasibility of Some Solutions

The costs of improving IRCA's verification system could vary significantly depending on the size of the affected workforce and the system design.

One consideration that would affect cost would be the number of cards issued. For example, the issuance could be to only eligible aliens or to all citizens of working age. One option would be to phase in the issuance over several years to minimize the short-term cost impact. However, should Congress opt for a single card system, it should be universally required.

The costs of a new counterfeit-resistant Social Security card could also vary significantly depending on its design. For example, including a photograph would increase the costs of issuing the card and require periodic reissuance since appearances change over time. However, this would help ensure that the job applicant presenting the card is the person to whom it was issued.

Costs for INS to issue its new counterfeit-resistant card could also vary significantly. If the new card were issued to all permanent resident aliens in the workforce, it would cost significantly more than issuing it to only new permanent resident aliens. One option Congress and the Administration could consider to reduce the immediate costs would be to phase in the distribution of the cards to all eligible aliens over several years.

Other considerations for reducing cost include:

- using existing government programs and agencies capable of processing large amounts of data rather than creating a new organization; and

- sharing the issuance cost between the government and the individual, as is now often the case when people apply for driver's licenses or state identity cards.

Matters for Congressional Consideration

The amount of discrimination we found resulting from IRCA is serious and requires the immediate attention of both Congress and the Administration. There are two ways to proceed.

One way is to rely upon the President to propose verification system changes he deems necessary, pursuant to the provisions of section 101(a)(1) of IRCA. This course would leave the initiative for action up to the executive branch. However, the necessary changes would require extensive debate and discussion between the legislative and executive branches before a final decision could be made on the solution.

The second alternative is for Congress to initiate discussion with the executive branch and interested parties on solutions to the IR[illegible] verification problem that should be considered in light of our findings. This could expedite the process.

In the final analysis, Congress has the following options: (1) leaving the sanctions and antidiscrimination provisions of the law as is for the present time, (2) repealing these provisions, or (3) leaving the current provisions in place and enacting legislation to amend IRCA's verification system to reduce the extent of discrimination resulting from IRCA.

The exact nature of the solution will emerge only after the debate that is inherent in our democratic process. Should Congress decide to retain sanctions and improve the current verification system, three principles for improving the system while reducing discrimination need to be kept in mind. These are: (1) reducing the number of work eligibility documents, (2) making the documents more counterfeit-resistant and less vulnerable to being used fraudulently, and (3) applying any reduced work eligibility documents to all members of the workforce. Congress could then defer further consideration of repealing the sanctions and antidiscrimination provisions of IRCA until a simpler and more reliable verification system has been in place for sufficient time to evaluate its effectiveness.

Recommendation to the Attorney General

We recommend that the Attorney General direct the Special Counsel to increase the government's efforts to educate the Nation's employers on how to comply with IRCA's antidiscrimination provision, particularly medium-size employers and employers in areas of high Hispanic and Asian populations.

Studies by City, State, and Private Organizations Show IRCA-Related Discrimination

In reaching our determination that IRCA's implementation has led to widespread discrimination against eligible workers, we relied on the measures described in chapter 3. In this chapter, we explore other sources of information on IRCA's impact.[1]

The findings from the studies and other sources should be interpreted with caution. Some of the studies' findings are based on non-representative samples. In addition, some of the organizations conducting the studies or providing data to us are not neutral in their position on the employer sanctions provision. Although the organization's position on employer sanctions may not have influenced their findings or conclusions, we cannot rule out the possibility of such influence. However, although all of the sources and studies have methodological limitations, we believe all information on IRCA-related discrimination should be available for consideration in the policy debate by Congress.

Survey of Private, State, and Local Agencies' Discrimination Complaints

State, local, and private organizations receive complaints about employment discrimination. We asked several of these organizations to provide information about the complaints received from July 1, 1988, to June 30, 1989. We also asked them to use EEOC criteria (see p. 33 for description) to identify the discrimination complaints related to employer sanctions.

The 14 organizations that responded to our survey with data were (1) American Friends Service Committee/Newark, (2) Center for Immigrant Rights, Inc./New York City, (3) Central American Refugee Center/Los Angeles, (4) Chicago Commission on Human Relations/Chicago, (5) Church Avenue Merchants Block Association, Inc./New York City, (6) Coalition for Humane Immigration Rights of Los Angeles/Los Angeles, (7) Community Task Force on Immigration Affairs/Houston, (8) Mexican-American Legal Defense and Educational Fund (MALDEF)/Chicago, (9) MALDEF/San Francisco, (10) MALDEF/Los Angeles, (11) New York City Commission on Human Rights/New York City, (12) Travelers Aid Services/New York City, (13) Archdiocese of Detroit/Detroit, and (14) Maricopa County Organizing Project/Phoenix.

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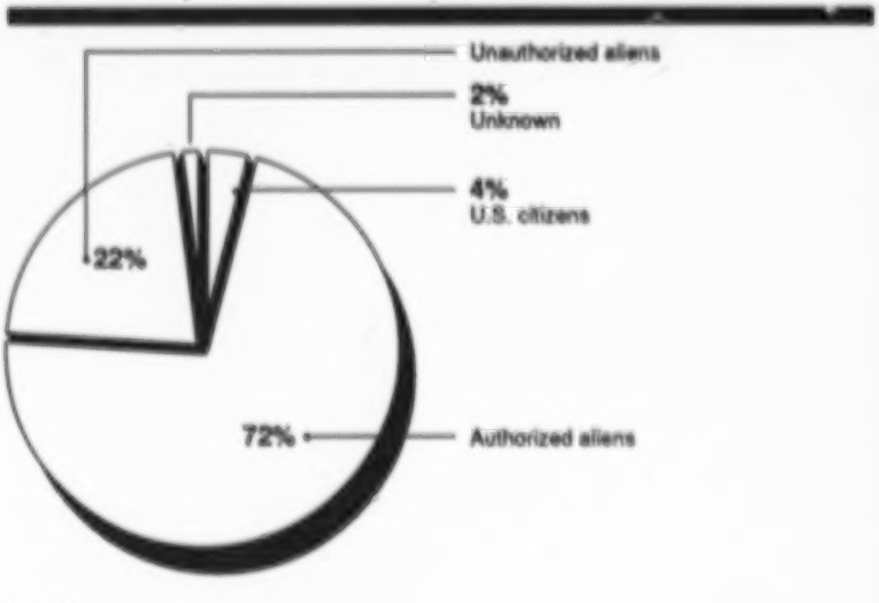
[1] In December 1989, Congress amended IRCA to authorize states to use State Legalization Impact Assistance Grant Funds for education and outreach efforts regarding employer discrimination on the basis of national origin or citizenship status. (The Immigration Nursing Relief Act of 1989, Public Law 101-238, was approved December 18, 1989.)

The 14 organizations reported having received a total of 1,200 complaints during the period July 1, 1988, to June 30, 1989. The majority of complaints were from authorized aliens, as shown in figure 4.1.

Figure 4.1: Surveyed Private, State, and Local Organizations Received the Majority of Their Complaints From Authorized Aliens



N=1,200

For the 913 complaints received from citizens or authorized aliens, the organizations reported that, according to EEOC criteria, 567 (62 percent) appeared to be related to the sanctions provision.

The most frequently cited discrimination issue by complainants was that employers had discriminated against them in terms and conditions of employment; there were also many complaints based on firing or not hiring. Within these issues, the most frequently cited allegation (not including "other") was that employers did not accept valid work authorization documents. (See table 4.1.)

Table 4.1: Discrimination Complaints Received by Private, State, and Local Organizations

Most frequent discrimination issue	Number received
Terms and conditions of employment	392
Fired	261
Not hired	223
Most frequent allegation against employers	
Did not accept valid work authorization documents	296
Retaliated because alien became legalized or asked for assistance to become legalized	157
Required permanent resident card	57

The majority of complaints received from authorized workers were from Hispanics (83 percent) and temporary resident aliens (56 percent).

City and State Organizations Study Discrimination

Several other city and state agencies have studied IRCA's implementation to determine if it has caused discrimination. Although the methodologies employed in these studies are not as strong as our methods, we did not want to exclude any information related to this issue.

Telephone Hiring Audit in New York City Also Shows Discrimination

In June 1989, the City of New York Commission on Human Rights observed employer behaviors through a telephone hiring audit. The audit was designed to identify different treatment by prospective employers toward telephone callers with accents compared to callers without accents.[2] Each audit consisted of a pair of testers of the same sex calling an employer in response to randomly selected help wanted advertisements in the four major New York City daily newspapers. One member of each pair had a foreign accent. Each tester pair offered substantially similar qualifications and backgrounds. All 86 employers audited were asked whether the position was open, if the caller could come for an interview, and what papers the caller should bring.

The hiring audit showed 41 percent of employers treating applicants with accents differently from applicants without accents. Of the employers contacted,

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[2] Tarnishing the Golden Door: A Report on the Widespread Discrimination Against Immigrants and Persons Perceived as Immigrants Which Has Resulted From the Immigration Reform and Control Act of 1986. The City of New York Commission on Human Rights, August 1989.

- 16 percent told accented callers that the positions were filled and told unaccented callers that the same positions were open,
- 12 percent scheduled interviews with only unaccented callers, and
- 13 percent required significantly different documents from accented as opposed to unaccented callers.

The report used the hiring audit to support its finding that the employer sanctions provision of IRCA had resulted in widespread discrimination against immigrants and persons perceived as immigrants.

Survey of San Francisco Employers

Between July 26 and August 2, 1989, San Francisco State University's Public Research Institute and the Coalition for Immigrant and Refugee Rights and Services did a telephone survey of San Francisco employers.[3] The 416 responses were from a randomly selected sample of 942 San Francisco businesses. The purpose of the survey was to "examine the impact of IRCA's sanctions on workers and employers in San Francisco and to determine whether such sanctions have resulted in employment practices that are either discriminatory or otherwise unfavorable to certain classes of authorized workers." The reported survey population included 36,730 firms employing 567,300 workers.

The survey reported the following results:

- 50 percent of the 373 employers who responded thought it riskier to hire people who speak limited English,
- 79 percent of the 341 employers who responded accepted only the most common and "official" documents even though there are many other INS-approved documents that authorize employment,
- 41 percent of the 340 employers who responded required employment authorization documentation before hiring,
- 26 percent of the 379 employers experienced hiring delays while job-seeker obtained documents, and
- 12 percent of the 402 employers who responded had different employment authorization requirements for foreign-born workers than for those born in the United States.

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[3] Employment and Hiring Practices Under the Immigration Reform and Control Act of 1986: A Survey of San Francisco Businesses (San Francisco, Sept. 1989).

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California Fair Employment and Housing Commission

The California Fair Employment and Housing Commission held hearings in three cities during 1989 to determine, among other things, if employment discrimination had increased as a result of IRCA. The Commission received extensive written documents and heard testimony from over 30 witnesses, including employers, employees, unions, attorneys, INS, and Justice's OSC.

In a January 1990 report, the Commission concluded that it appears that

> "employers' fear of sanctions, and confusion and misinformation about IRCA's requirements, coupled with a tremendous administrative backlog at the INS, have resulted in a widespread pattern and practice of discrimination . . . based on national origin and citizenship status, in violation of IRCA's anti-discrimination provisions as well as other state and federal civil rights laws."[4]

For these reasons, and because the Commission believes employer outreach can be more effective in an atmosphere free of the threat of sanctions, the Commission recommended (1) a moratorium on employer sanctions enforcement and (2) a 2-year extension of the law's "sunset" (repeal) provision beginning after the moratorium.

The Commission's report contained other findings and recommendations to change IRCA and INS' regulations and administrative procedures. For example, the Commission found the following:

- INS public education materials are incomplete and confusing. As a result, employers who are presented with unfamiliar documents often terminate or refuse to hire persons who have demonstrated their legal entitlement to work.
- Severe INS delays exist in issuing initial and renewed work authorization documents. This has resulted in employers firing or refusing to hire employees who are legally entitled to work but who have not yet received work authorization documents.

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[4] Public Hearings on the Impact and Effectiveness in California of the Employer Sanctions and Anti-Discrimination Provisions of the Immigration Reform and Control Act of 1986. California Fair Employment and Housing Commission, January 11, 1990.

New York State Task Force

The New York State Inter-Agency Task Force on Immigration Affairs studied IRCA-related employment discrimination in New York and issued a final report in November 1988.[5] The study included telephone interviews with 400 randomly selected employers in the New York City metropolitan area and a survey of community-based organizations.

The survey of community organizations showed that most problems concerned employers refusing to accept certain work authorization documents from eligible workers.

The Task Force report contained other findings and recommendations as follows:

- It estimated at least 10,486 occasions when people had been denied employment because of delays in issuing documents.
- It found that 73 percent of employers familiar with the I-9 procedures required work authorization documents before the first day of work.
- The report said that 20 percent of employers familiar with the I-9 procedures reported difficulty in determining if particular documents were allowable.

The Task Force recommended, among other things, that INS (1) develop uniform work authorization documents and (2) increase employer education in New York.

Arizona Civil Rights Advisory Board

The Arizona Civil Rights Advisory Board held a public hearing in June 1989 to determine whether IRCA had a discriminatory impact on the hiring of Hispanics and other foreign-looking residents of Arizona. The Board concluded that IRCA caused an increase in national origin employment discrimination. It also concluded that few IRCA complaints had been reported because government agencies had not informed affected individuals of their rights under IRCA's antidiscrimination provision.

The Board supported recommendations similar to those made by the U.S. Civil Rights Commission,[6] some of which include (1) amending

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[5] Workplace Discrimination Under the Immigration Reform and Control Act of 1986: A Study of Impacts on New Yorkers. New York State Inter-Agency Task Force on Immigration Affairs, November 4, 1988.

[6] The Immigration Reform and Control Act: Assessing the Evaluation Process, A Report of the United States Commission on Civil Rights (Washington, D.C., Sept. 1989).

IRCA's provisions to have GAO do at least one additional report, (2) holding hearings to collect both qualitative and quantitative information, (3) using data from state and local governments and private organizations, (4) defining in statute what constitutes "unacceptable discrimination," and (5) requiring specific examination of sanctions' effectiveness.

Conclusion

A common finding in the various studies was employers' refusal to accept, or uncertainty about, valid work eligibility documents.

INS and Labor Have Generally Met Their Responsibilities to Carry Out IRCA Satisfactorily

Congress asked us to determine if IRCA's sanctions provision was carried out "satisfactorily." Congress did not define "satisfactorily," but to us the word means average performance (i.e. midway between exceptional and failure). Thus, INS, which is responsible along with the Department of Labor for carrying out this law, would meet our definition for satisfactory performance if, at a minimum, it developed plans and policies and implemented procedures that could reasonably be expected to (1) identify and fine violators and (2) educate employers about their legal requirements. We applied the same standards to Labor, with the exception of fining violators.

In this chapter, we (1) determined if INS and Labor carried out the law satisfactorily as we defined it and (2) reviewed one aspect of the law's implementation that is not included in the definition of "satisfactory" because it is generally beyond INS' and Labor's immediate control—employers' unwillingness to voluntarily comply after considerable government education efforts.

We found that INS and Labor have generally fulfilled their responsibilities to carry out the law satisfactorily. INS has developed plans and policies and has implemented procedures for the program that we believe could reasonably be expected to identify and fine violators and educate employers. Similarly, Labor has developed plans and policies, and has implemented procedures to identify potential IRCA violators report them to INS, and educate employers. Using these policies and procedures, INS has identified employers who were not in compliance with IRCA and issued them over 8,800 fine notices or warnings.[1] For the 431 closed fine cases where employers requested a hearing, INS prevailed against the employer in every case. Labor has educated almost 90,000 employers, conducted over 77,000 inspections, and reported the results of employer visits to INS.

Following INS' efforts to educate employers about IRCA's employer sanctions provision, an estimated 83 percent of employers said they were aware of the law. Also, employers visited by INS reported a higher compliance level and a better understanding of the form I-9 requirements than those INS did not visit. Most of the employers who were aware of the law and had a basis to judge INS' education effort said it helped to familiarize them with the law.

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[1] Warnings included citations that were issued prior to the full enforcement of IRCA. Citations had the same effect as a warning.

Although it has generally carried out the law satisfactorily, INS needs to improve its implementation of the sanctions provision. Specifically, INS needs to (1) reinspect employers who hired unauthorized aliens to determine if they have come into compliance, (2) document in the official INS case files the important events that occur during investigations, (3) develop an effective employer sanctions information system for the program, and (4) modify its nationwide inspection program of randomly selected employers so that the results can be generalized to industries and geographic areas.

For those employers in our 1989 survey who said they were aware of the law and hired at least one employee, 65 percent were in full voluntary compliance with the I-9 requirements.

INS Implementation of IRCA

As of September 16, 1989, INS had issued over 3,500 intent-to-fine notices to employers for employing unauthorized aliens or for not completing I-9s. The fines assessed totaled almost $17 million. After negotiations with employers, INS settled for about $6.1 million. Table 5.1 summarizes INS' enforcement actions since the law was enacted.

Table 5.1: INS Enforcement Actions
(November 6, 1986, to September 16, 1989)

Action	Number	Dollar amount
Fines assessed	3,532	$16,952,988
Violations —Employing aliens	3,240	
—Not completing I-9s	36,354	
Fines settled	2,534	6,142,678
Fines collected	1,937	4,999,750

Note: One fine may involve multiple violations.

Source: INS Regional Offices.

In addition, INS issued over 5,300 warning notices (or citations) to employers during this period. According to INS, as of September 7, 1989, it prevailed in all 431 closed employer sanction cases where the employers requested hearings. In most of these cases the employers settled with INS before the hearing.

INS Policy for Fining Employers Was Carried Out Satisfactorily

On the basis of our review of randomly selected employer sanction fine cases, we found that INS field offices have satisfactorily carried out the Commissioner's policy for sanctioning employers. We estimate that at least 97 percent of the fines complied with the policy.

On April 15, 1988, the Commissioner delegated to four INS regional offices the authority to approve intent-to-fine notices and authorized the regional offices to further delegate approval authority to individual districts and sectors. On May 26, 1988, the Commissioner established a sanction policy, and on June 1, 1988, INS commenced full enforcement of employer sanctions.[2]

The Commissioner's policy emphasized penalizing employers who knowingly hired or continued to employ unauthorized aliens. Accordingly, INS may fine employers for paperwork violations if the employer (1) fails to complete I-9s for new employees following a documented educational contact; (2) has unauthorized workers in the workplace, and the "knowing" violation cannot be proven; (3) agrees to a paperwork fine pursuant to a plea agreement; or (4) other egregious factors exist.

From our review of closed fine cases, we estimate that out of 702 fines levied against employers, 683, or 97 percent, of the fines were consistent with INS policy, and 19, or 3 percent, may not be.

Of the estimated 683 employer fines, we estimate that about

- 354 were for knowingly hiring or continuing to employ unauthorized workers;
- 73 were for violations following a documented educational contact; and
- 256 were for paperwork violations but involved the apprehension of unauthorized workers in the workplace.[3]

The remaining estimated 19 fines were for paperwork violations. The files we reviewed did not indicate any of the first three conditions specified in the Commissioner's policy that would call for the imposition of a paperwork fine. Under the policy, these fines may involve egregious factors. According to INS officials, "egregious" was not defined. Therefore, we were not able to determine if the estimated 19 fines were consistent with the policy.

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[2] The enforcement of sanctions did not include employers of seasonal agricultural employees because such employers could not be sanctioned before December 1, 1988.

[3] Ninety-four of the 256 fines involved the franchise operations of one company. The fines were settled under a collective agreement that included the apprehension of an unauthorized worker. For the purpose of this analysis, we considered the employment of unauthorized workers as "egregious".

Employers Reported INS Education Efforts Helped Familiarize Them With the Law

A major element of the INS implementation strategy is educating employers about IRCA's requirements. According to INS records, between November 6, 1986, and September 1, 1989, INS contacted over 2.2 million employers to explain IRCA. Also, INS distributed an Employer Handbook explaining the law to over 7 million employers and conducted a national media campaign.

According to our 1989 survey results, about 1.7 million of the 3.1 million employers who were aware of the law and had a basis to judge INS' education efforts said INS' efforts had increased their familiarity with the law. We estimate that about 536,000 employers who were aware of the law said they had no basis to judge INS' efforts.

Employers Visited by INS Report Increased Understanding and Compliance

According to our 1989 survey, an estimated 134,000, or 3 percent, of the 4.6 million employers in our survey population said they had received INS visits since the law's enactment. Generally, these employers reported knowing more about the I-9 requirements than employers not visited. Also, a higher percentage of the visited employers were in full compliance with the law's verification requirement than those not visited.

According to our survey,

- 99 percent of the employers who had been visited by INS told us they were aware of the law, and 82 percent of the employers who had not been visited by INS said they were aware of the law;
- 82 percent of the employers who had been visited by INS said they understood the I-9 requirements, and 57 percent of the employers who had not been visited by INS said they understood the I-9 requirements; and
- 79 percent of the employers who had been visited by INS had completed all required I-9s, and 57 percent of the employers who had not been visited by INS completed all required I-9s.

Department of Labor Implementation of IRCA

Labor's Inspections of I-9S Show Lower Compliance Level Than GAO Survey

Between September 1, 1987, and September 30, 1989, Labor Department officials from the Wage and Hour Division and the Office of Federal Contract Compliance Programs completed 77,638 compliance inspections. Forty-three percent of the employers inspected were in compliance with the I-9 requirements. This level is lower than the 65 percent compliance level we found in our randomly selected nationwide sample of employers. According to Labor officials, this difference could be because most visits were to employers suspected of violating one or more federal labor laws. We did not verify the accuracy or reliability of Labor's inspections data.

Labor reports the results of employer visits to INS, including those where Labor did not inspect the I-9s. For example, the employer's I-9s might have been at another location, or Labor might not have been able to provide the employer with the required 3-day notice of the inspection. In fiscal year 1988, about 6 percent of Labor's visits did not include an inspection of the I-9s because it did not provide the employer with a 3-day notice.

We discussed with Labor officials the need to provide employers with the required 3-day notice of inspection. Labor subsequently revised its notification letter to employers to include the notice of the I-9 inspection. By March 1989, Labor had implemented this revision, and the percentage of inspections that were not performed in fiscal year 1989 subsequently dropped to less than 4 percent.

Labor officials also reported other possible violations they observed. Through June 30, 1989, these included

- 42 visits where Labor suspected there might have been unauthorized aliens,
- 10 employers who were suspected of disparate treatment of employees, and
- 56 visits where employees were suspected of using counterfeit or fraudulent documents.

Our second annual report on employer sanctions recommended that Labor officials take reasonable steps, such as reviewing employer records to determine if I-9s have been prepared for all new employees. By May 1989, Labor had revised its field manuals to include instructions to request such documentation from employers.

Opportunities to Improve INS Implementation of the Law

We identified four areas where INS could improve its implementation of employer sanctions: (1) reinspection of employers who have been sanctioned for hiring unauthorized aliens to determine if they are continuing to violate the law, (2) documentation of decisions made during investigations in the official case file, (3) modification of its program for randomly selecting employers for inspection so that the results can be generalized to particular industries and geographic areas, and (4) development of an automated employer sanctions information system that can more effectively monitor the program.

Need to Reinspect Employers Who Have Been Sanctioned

IRCA imposes progressively higher fines to deter employers from repeatedly hiring unauthorized workers. The INS employer sanctions field manual does not require INS officials to reinspect sanctioned employers, but without a reinspection INS cannot tell if the sanctioned employer stopped the illegal practice.

On the basis of our review of closed INS employer sanction case files, we identified 224 cases where INS determined that the employer had employed at least one unauthorized alien. INS followed up in 31 of these cases and determined that 20 were in compliance and 6 were not (2 were continuing to employ unauthorized aliens and 4 were not complying the I-9 requirements). The results of the remaining five follow-up cases were not in the file.

Tips from informants prompted INS to begin the two follow-up cases that resulted in fines for continuing to employ unauthorized aliens. In one case, the employer was fined $6,000 for knowingly employing four unauthorized aliens and for four violations of the I-9 requirements. During the month the employer paid the fine, INS received another tip that the employer had rehired one of the unauthorized aliens. INS investigated the tip and fined the employer an additional $4,000.

Our discussions with INS field officials indicated that there might be more follow-up than is documented. For example, one INS district notified employers who had been sanctioned and requested them to submit all I-9s to INS for reinspection. Other INS officials said they had done some follow-up but did not include the results in the case files.

Case Files Lack Documentation for Decisions Reached

We believe that documenting the decisions INS makes during an employer sanction investigation is an effective internal control that (1) allows INS to assess whether the program's objectives are being achieved, (2) helps ensure equitable treatment of employers, and (3) provides a proper foundation for future enforcement action. From our review of closed fine cases, we estimate that, from a universe of 702, many were missing write-ups documenting events such as:

- reasons for reducing the initial fines (an estimated 378 cases);
- whether INS had educated the employer about the law's requirements before assessing a fine (an estimated 188 cases);
- the INS application for the notice of intent-to-fine (an estimated 383 cases);
- whether the employer of unauthorized workers agreed as a part of the settlement to participate in the INS program to help employers find sources of authorized workers (an estimated 138 cases);
- whether fines were collected (an estimated 84 cases) and if they were not, why not (an estimated 26 cases); and
- the final order or settlement agreement with the employer (an estimated 26 cases).

According to an INS official, some offices maintain records of educational contacts separate from the case files. She also said that INS is preparing a new records manual that should ensure consistent recordkeeping and documentation for case files.

INS can benefit from documenting the events that occurred during the initial violation when following up on employers suspected of repeatedly violating the law. For example, IRCA provides the following five factors for INS to use in determining the amount of the fine: (1) the size of the business, (2) a good faith effort to comply, (3) the seriousness of the violation, (4) the presence of unauthorized alien employees, and (5) the employer's history of previous violations. If INS does not document the factors it considers when establishing the initial fine, information may not be available to establish the appropriate fine for repeat violations.

Further, without such information, INS may not be able to demonstrate that employers with the same violation and different fine amounts were treated equitably. For example, an employer in INS' Western Region had paperwork violations for six authorized workers and was assessed a $2,000 fine, which INS settled for $1,500. However, we found an employer in the Southern Region who had the same number of violations and was assessed a $600 fine, which INS settled for $100. These employers might have been treated fairly, considering the details of their cases. The files, however, lacked information that would explain the discrepancy.

According to INS officials, INS fines employers to encourage compliance with IRCA and, in our opinion, the fine must be high enough to achieve that goal. INS has discretionary authority to reduce fine amounts and did reduce them in 59 percent of the cases. However, in 91 percent of these cases INS did not document the factor(s) that contributed to the fine reduction. Without this information, INS cannot be certain that fine amounts for subsequent violations are appropriately set.

INS Needs to Modify Its Random Inspection Program to Provide Reliable Measures of Voluntary Compliance

With millions of employers and limited investigative resources, INS needs to effectively identify reason of noncompliance for action. INS' only measure of voluntary compliance is the General Administrative Plan (GAP), which randomly selects employers for I-9 inspections. The results of GAP inspections can be used to identify areas of noncompliance. For example, GAP results could show which industries or geographic areas have higher noncompliance levels. With this information, INS can direct additional education or investigative resources toward that industry or area.

GAP has two parts: (1) employers randomly selected from all industries and geographic areas (the General Inspections Program) and (2) employers randomly selected from specific industries that have employed significant numbers of unauthorized aliens (the Special Emphasis Inspection Program). INS district and sector officials select the industries and areas for the Special Emphasis Inspection Program. In fiscal year 1989, INS used about 35 percent of its employer sanction enforcement resources to do 5,118 GAP inspections. Each of the GAP programs received about half of the inspection resources.

We found that (1) INS plans to devote more resources to the GAP General Inspections Program than necessary to measure employer compliance levels nationwide and (2) the GAP Special Emphasis Inspections Program cannot be used to generalize compliance levels to specific industries in selected areas (or nationwide).

General Inspections Program

One purpose of the General Inspections Program is to monitor the nationwide compliance levels among various employment sectors by inspecting the I-9s of a nationally representative sample of employers.

INS planned to do 14,141 general inspections in fiscal year 1989. This number is based on the INS resources at the district and sector levels that are available during the year to complete the inspections. While 14,141 inspections may promote employer compliance, the number far exceeds the inspections required to provide reliable information on nationwide compliance levels. A sample of 400 randomly selected employers is enough to generalize the results to all employers nationwide (but not to selected areas) and be reasonably confident (95 percent) that they are accurate. Further, if INS completes the 14,141 planned inspections, the results cannot be generalized to specific industries or areas of the country due to the lack of an appropriate sampling plan.

INS identified employers to receive general inspections by drawing a random sample of employers from a list of over 5 million employers. This sample will permit INS to measure the nationwide compliance level for all industries and areas. However, the sampling plan INS devised did not consider employers' industries or their geographic distribution. Consequently, INS will not be able to reliably measure compliance levels by industry or geographic area. To do so would require INS to use information on the distribution of industries nationwide. This would provide a proportionate stratified random sample that would permit generalization of inspection results to specific areas and industries.

Special Emphasis Inspections Program

The Special Emphasis Inspections Program is directed at employment sectors that have in the past employed significant numbers of unauthorized aliens. INS officials in each district and sector can select as many as five industries that in the past hired unauthorized aliens. Like the sampling plan for general inspections, the number of employers selected for special emphasis inspections is determined by the level of INS resources available. INS planned to do 18,080 special emphasis inspections in fiscal year 1989.

The results of these inspections, however, cannot be generalized to specific industries or areas, as intended. To generalize to specific industries or areas would have required (1) using objective criteria to select industries based on an analysis of previous alien apprehensions and (2) knowing the portion of the universe of employers that each selected industry represents. Our review of the district and sector justifications for selecting industries showed that they did not meet one or both of the requirements. Specifically, 23 INS offices did not submit a plan. Thirty-seven submitted plans that either did not have the required analysis or did not consider the number of employers within the various industries. Even though the employers are randomly selected for special emphasis inspections, the results cannot be generalized to each area's industries or to employers nationwide unless both requirements are met.

GAO Proposed a More Efficient GAP Plan

We prepared a detailed sampling plan for GAP that would allow INS to reliably measure voluntary compliance nationwide and in each region for all 10 industry classifications. Our plan presents one alternative to INS for the more efficient achievement of all the goals of GAP. At the same time it reduces by 25 percent the amount of personnel resources required for the task. In December 1989, we presented this plan to INS officials who agreed to consider it.

In general, the proposed plan calls for temporarily combining the Special Emphasis and General Inspections programs into a single inspection program. On the basis of information gained over 3 to 5 years of operation, it would provide a more objectively defined special emphasis group consisting of those employers who are least likely to be in compliance.

Several aspects of the current program would be maintained. The individual district and sector offices would continue to identify the number of inspections to be done within their respective areas. Specific employers would still be randomly selected from the universe of employers within the area. However, employers would be selected for inspection using different procedures. Rather than allowing local INS officials to select Special Emphasis industries, all selections would be based upon a proportionate random sample of employers within each industry. The number of employers selected overall would be determined by (1) available resources and (2) the proportion of employers falling within each industry in the individual geographic area serviced by the office.

This type of selection would ensure more objective criteria for defining future Special Emphasis inspections. It would also maximize the educational and deterrence goals of the program because the likelihood of an inspection would not be known within any particular industry. Under current procedures, industries within a category may become aware through informed communication channels that they are targeted for inspections. This could minimize the educational and deterrence impacts.

INS Needs to Implement a Service-Wide Automated Employer Sanctions Information System

The INS employer sanctions information system does not provide much of the information we believe is needed to provide effective management oversight of the program. INS officials planned to make system improvements in fiscal year 1989 but did not.

As of July 1989, INS' employer sanctions information system relied on manual compilations of district and sector reports on their employer sanction activities. The field offices report both employer education contacts and enforcement activities. With this information, INS headquarters officials monitored the number of (1) education contacts; (2) compliance inspections; and (3) investigations, warnings, and fines.

However, this manual system does not provide the following information:

- the number and type of violations by industry,
- GAP results on employer compliance within specific industries,
- the number of unauthorized aliens apprehended at work and the portion that were hired before and after IRCA,
- the extent of alien use of counterfeit or fraudulent documents to complete I-9s and the types of documents used,
- the number of employers charged with criminal and civil violations,
- whether local INS office reinspection of sanctioned employers identified repeat violators,
- the number of employers issued an intent-to-fine notice who have requested a hearing before an administrative law judge, and
- how much of the total fines that employers agreed to pay has been collected.

INS planned to implement a service-wide automated information system in fiscal year 1989 to provide comprehensive employer sanctions information. However, according to an INS official, the proposed system was not implemented primarily because of inadequate funding. Further, had the funds been provided, they would have been used to (1) purchase computer equipment, (2) resolve software development problems, and (3) provide training for field personnel.

As an interim solution, INS modified the manual system and tested the proposed changes during August 1989. We reviewed the modification and found that when implemented, it would include most of the missing information discussed above and should improve INS' ability to monitor the program. However, as of February 1990, according to INS officials, the modified manual system was not fully implemented, and the management information discussed above was not available. Even when fully implemented, INS officials view the modification as a short-term solution to the long-term requirement for an effective employer sanctions information system.

Aspects of IRCA Implementation That Are Not Included in "Satisfactorily" Carrying Out the Law

Employers' Overall Voluntary Compliance Has Increased Significantly

Comparing our 1988 and 1989 survey results shows a significant nationwide increase in voluntary compliance with the I-9 requirement. Our 1989 survey estimate shows that 1.58 million (about 65 percent) of the 2.42 million employers in our survey population who were aware of the law and hired at least one employee during 1988 completed an I-9 form for each employee hired as the law required, compared to 50 percent in our 1988 survey.[1] An additional 167,000 (7 percent) of the employers in our 1989 survey said they had completed some but not all required I-9s, and the remaining 668,000 (28 percent) said they had not completed any I-9s for employees they hired. Table 5.2 shows employer compliance by geographic area.

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[1] If employers who hired one or more employees during 1998 but were not aware of the law are included, we estimate the compliance rate is 57 percent.

Table 5.2: I-9 Compliance by Geographic Area

Figures in percent

	Compliance level
Rest of west	76
Texas	75
California (excluding Los Angeles)	71
Miami	70
Chicago	66
New York City	66
Los Angeles	61
Other states	61

Source: GAO 1989 Employer Survey.

Employers who were not in compliance more frequently

- hired 10 or fewer employees during 1988,
- had 10 or fewer employees as of December 31, 1988,
- did not have any I-9 forms,
- had not been visited by INS and did not expect to be visited, or
- did not clearly understand the I-9 verification requirements.

Many Employers Hiring Unauthorized Aliens Did Not Complete I-9S

INS interviewed 886 unauthorized aliens who were apprehended at work during August and September 1989. These interviews and the subsequent inspection of their employer's I-9 forms indicated that many employers who hired unauthorized workers did not complete an I-9 for each. INS inspected employer records for 500 of the 886 unauthorized aliens who were hired after IRCA's enactment and should have had I-9s done on them. However, INS' inspections of employers' records revealed that 278 (56 percent) of the 500 aliens did not have completed I-9 forms on file. In addition, 354 (41 percent) of the 869 aliens who responded to our survey said their employer did not ask for work authorization documents.

Conclusions

We found that INS and Labor have generally met their responsibilities for carrying out employer sanctions satisfactorily. INS has identified violators, issued over 8,800 fine notices and warnings, and prevailed in all 431 closed cases where employers requested a hearing to challenge the INS sanction. Labor has conducted over 77,000 I-9 inspections and is reporting the results of inspections to INS. However, we identified needed improvements at INS.

Employer sanctions' effectiveness will increase to the extent employers are aware of the law, understand the I-9 requirement, and comply voluntarily. After considerable government education efforts, 83 percent of the nation's employers reported awareness of the law. On the basis of our 1989 survey, an estimated 1.7 million employers said they believed the government's education program was helpful. Although voluntary employer compliance has increased, 35 percent were still not fully complying with the I-9 requirement. We believe this non-compliance level suggests a lack of employer understanding of the legal requirements.

INS does not routinely reinspect employers who hired unauthorized aliens to see if they are in compliance. The reinspections that INS has done show that some employers after having been fined continue to employ unauthorized aliens. Without systematic reinspection, INS cannot know if the employers have come into compliance. INS also does not fully document key decisions made during the sanctions investigation, thus hampering reinspections.

INS' only method to measure employer compliance is GAP. However, the GAP General Inspection Program plans to use more resources than necessary to measure compliance. In addition, the GAP Special Emphasis Program does not, as it was intended, permit INS to generalize the employer compliance results to specific industries and areas of the country. If modified as we propose, some INS resources currently planned for use in GAP could be reallocated to investigations of employers suspected of employing unauthorized aliens.

INS does not have an automated employer sanctions information system that can provide much of the information needed to manage the law's implementation effectively. Although INS officials have said that implementing an automated service-wide system is a high priority, sufficient funds have not been allocated.

Recommendations

We recommend that the Attorney General require the Commissioner of INS to

- Begin to reinspect employers of unauthorized aliens to determine if they have come into compliance.
- Document in the official case file the major events that occurred during the sanctions investigation, such as (1) whether the employer was educated about the law's requirements and (2) the reason(s) for changes in

the fine initially assessed that could affect the penalties for subsequent violations.

- Modify the GAP program to provide reliable measures of employer compliance in various industries, nationwide, and within INS regions. GAO's proposed sampling plan is one way to obtain these reliable measures.
- Establish an automated employer sanctions information system that can be used to more effectively implement the program.

Agency Comments

We discussed our findings and the basic thrust of these recommendations with INS officials and they were generally receptive to making improvements along these lines.

Chapter 6

IRCA Has Not Created an Unnecessary or Unreasonable Regulatory Burden for Employers

Congress was concerned about the extent of regulatory burden the sanctions provision placed on employers by requiring them to complete I-9 forms for all new employees. The law requires us to report on whether this regulatory burden is "unnecessary," but does not define the term. In the absence of definitive legislative guidance, we established our own criteria—that the principal burden resulting from the sanctions provision (i.e., preparation of an I-9) would be unnecessary if it could be proven that the law was ineffective. We defined ineffective as failing to significantly decrease the employment of unauthorized aliens and/or their flow into the United States below what the levels would have been without the law.[1]

Nearly all the evidence suggests that IRCA has reduced illegal immigration and employment. Thus, by our definition, the burden from the sanctions provision is not unnecessary. While INS interviews of unauthorized aliens apprehended at work showed many had fraudulent or counterfeit documents (see ch. 3), the data in this chapter suggest that many other unauthorized aliens without such documents were unable to find work because of the law's verification system.

Congress was also concerned that IRCA's antidiscrimination provision might be used by private groups to harass employers, thus creating an "unreasonable" burden. We did not find any evidence that this occurred.

We estimate that the cost of preparing the I-9s would have ranged from $69 million to $138 million if all of the 4.6 million employers in our survey population had fully complied during 1988.

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[1] Six countries and Hong Kong have reported that if they had not enacted employer sanction laws, the problem of aliens working illegally would be greater than it was. Illegal Aliens: Information on Selected Countries' Employment Prohibition Laws (GAO/GGD-86-17BR, Oct. 28, 1985).

Law Appears to Be Reducing Illegal Immigration and Employment

Employer Survey Results Suggest the Law Has Been Partially Effective

Fifty-five percent of employers said they were aware of the law and had no basis to judge whether the law was effective in reducing unauthorized alien employment in their industry. However, of the remaining 45 percent who reported that they were aware of the law and had a basis to judge the law's effectiveness, more than half said they believed that employer sanctions had reduced unauthorized alien employment in their industry. Specifically, 20 percent said they believed the law has been effective to a "very great" or "great" extent in reducing the number of unauthorized aliens working in their industry. An additional 36 percent said it was effective to a "moderate" or "some" extent; 44 percent said it was effective to little or no extent.

Alien Interviews Suggest the Law Has Made Finding Work More Difficult

INS interviews of unauthorized aliens apprehended at work during August and September 1989 suggest that the law has made it more difficult for some to find jobs. Specifically, 135 of the 864 apprehended aliens (16 percent) hired since the law's enactment said another employer had refused to hire them because they could not show work authorization documents. Further, 80 of the 135 aliens reported being refused employment on more than one occasion.

Surveys of Mexicans Suggest the Law Has Deterred Immigration to the United States

A private research firm's August 1989 survey in 42 randomly selected towns and cities across Mexico suggests that the law has begun to deter immigration to the United States.[2] Specifically, the survey found that 62 percent of the Mexicans said recent changes in U.S. immigration laws discouraged them from going to the United States, 21 percent said the changes had no effect, 10 percent said the changes encouraged them to go to the United States, and 7 percent were not sure or refused to answer.

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[2] The survey was done for the Los Angeles Times by Belden & Russonello Research and Communications of Washington, D.C., with field work under the direction of Prospective Estrategica, A.C. of Mexico, D.F. The survey of 1,835 persons has a margin of error of ± 3 percent at the 95 percent confidence level.

The changes in the law seemed to have had more of a deterrent effect on aliens who had prior experience migrating to an area with a large alien population. Sixty percent of those who had previously been to the United States reported being discouraged from immigrating by the recent changes in the immigration law. Sixty-six percent who had previously been to California and 75 percent who had been to Los Angeles said that changes in the law had discouraged them from immigrating.

University of California Survey of Mexicans Shows Moderate Deterrent Effect

The Center for U.S.-Mexican Studies at the University of California at San Diego did a survey in three rural Mexican communities between July 1988 and January 1989. For the 107 respondents who had previously immigrated to the United States without documents at least once since 1982, 39 percent said that they considered going to the United States but decided not to go because of such IRCA-related problems as fear of not finding work. Seventeen percent of another 125 people surveyed who had never been to the United States decided not to go because of IRCA or because of the lack of papers required to find work. About 85 percent of the total 232 persons in both groups of prospective immigrants believed that it was more difficult to get work now because the law requires employers to ask for documents. However, 63 percent of the recent undocumented migrants and 71 percent of the prospective immigrants believed it was still possible to get a job in the United States without papers.

The study also concluded that the populations of sending communities have a very high level of knowledge about IRCA. All those who had been to the United States knew how employer sanctions were supposed to work. Seventy-eight percent of those who had never been to the United States knew about employer sanctions.

Urban Institute Says the Law Has Deterred Illegal Migration

A July 1989 study by the Urban Institute found that IRCA has slowed illegal immigration across the U.S. southern border.[3] The study analyzed monthly data on Border Patrol apprehensions from January 1977 to September 1988 using a model that included various factors other than the law (e.g., changes in the Mexican economy). We analyzed the methodology and found it sound.[4]

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[3] *The U.S. Immigration Reform and Control Act and Undocumented Migration to the United States*, Urban Institute, Washington, D.C. (PRIP-UI-5, July 19, 1989).

[4] We did not analyze the methodologies used in the other studies discussed in this chapter.

The study estimated that the number of border apprehensions between November 1986 and September 1988 declined nearly 700,000 (about 35 percent) below the level that would be anticipated without IRCA. The study attributed most of this decline to IRCA's employer sanctions' deterrent effect (71 percent). The remaining decline in apprehensions was attributed to the agricultural legalization program (17 percent) and changes in the INS effort (12 percent).

Rand Study Finds Sanctions Reduced Illegal Immigration Initially but Long-Term Effect Is Unclear

In December 1989, the RAND Corporation provided us with the preliminary results of its ongoing research. To assess the effects of the sanctions provision on illegal immigration, RAND developed a model to predict what apprehensions would have been without IRCA and compared the predictions to the actual data. RAND assumed that if the sanctions provision was effective, one would expect to see a decrease in apprehensions of illegal aliens and fewer tourist visas being requested as potential undocumented immigrants refrain from entering the country. The researchers also expected to find increases in guest worker applications, applications for asylum, and applications for permanent immigrant visas as potential illegal immigrants search for legal means to immigrate. Also, RAND reasoned that wages in labor markets with large alien populations should rise if the supply of undocumented workers declines.

Analysis of these indicators suggests that in fiscal year 1987, illegal migration was reduced by up to 20 percent because of the sanctions provision. In fiscal year 1988, this deterrent effect may have disappeared. Fiscal year 1989 results are mixed. Depending on the assumptions employed, it was found on the basis of INS apprehension data that there were up to 30 percent fewer illegal border crossings.[5] Several other indicators, such as asylee and guest worker applications and tourist visas issued, suggest a marginal decline in illegal immigration. However, the labor major market survey indicated no decline in the supply of undocumented labor.

University of Chicago Study Does Not Confirm Illegal Immigration

The Population Research Center of the University of Chicago surveyed Mexican towns before and after IRCA and found no evidence that the law had lowered illegal immigration or greatly increased the costs or difficulty of illegal entry. The study concludes that IRCA appears to have increased aliens' use of professional smugglers to cross the U.S. border illegally, and this has lowered the apprehension rate. The study used data from two Mexican community surveys in 1982-83 and 1987-88.

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[5] The RAND model factored out apprehensions that would have been generated by amnestied aliens and accounted for changes in Border Patrol resources.

Staff From the Bureau of the Census Report That Survey Results Are Inconclusive

The Current Population Survey (CPS) is a monthly survey of about 58,000 households nationwide which is funded by the Bureau of Labor Statistics and conducted by the Bureau of the Census. In September 1989, Census staff reported on their analysis of data on the foreign-born population collected in the CPS for November 1979, April 1983, June 1986, and June 1988.[6] The report concluded that it was not possible to make a determination from the available evidence whether IRCA had reduced the flow of undocumented immigrants below the pre-IRCA estimates.

There was no evidence that the level of average annual population change due to undocumented immigration for the 1986-88 period is different from previous pre-IRCA periods. The report stated that CPS is limited in its ability to assess IRCA's effects and that a complete evaluation may not be feasible without a longer observation period or more precise data and methods.

GAO Indicators of Employer Sanctions' Effectiveness

Using the following indicators, we also analyzed the extent to which the sanctions provision appears to be achieving the congressional objective of reducing unauthorized alien employment and immigration to the United States:

- the rate that INS apprehends unauthorized aliens adjusted for the level of enforcement, and
- the extent employers rely on legal labor sources rather than unauthorized alien labor.

Caution should be exercised in using these indicators primarily because changes may be influenced by factors other than employer sanctions. As a result, IRCA may not be the only cause of changes. For example, economic or political conditions in other countries can affect the flow of aliens into the United States. Accordingly, changes in the following indicators are only a rough gauge of employer sanctions' effectiveness.

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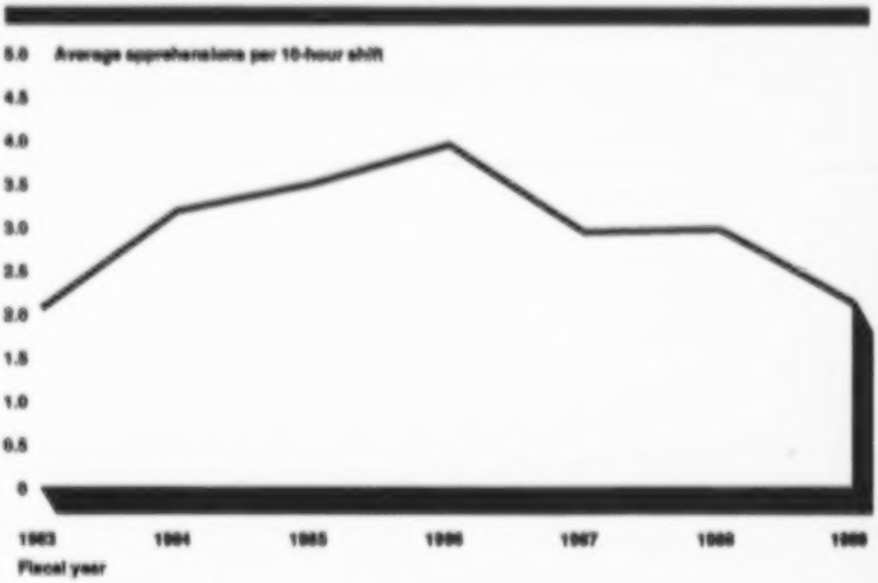
[6] According to the authors, the views expressed in their report do not necessarily reflect those of the Census Bureau.

INS Apprehensions

It seems to us that if employer sanctions are effectively reducing job opportunities for unauthorized aliens, fewer aliens will attempt to enter the country illegally to search for work. One measure of the flow of aliens entering the country is Border Patrol "linewatch" apprehensions measured by 10-hour shifts. Linewatch is a surveillance program at major crossing points at or near the border to apprehend aliens entering the country illegally.

Figure 6.1 shows INS Border Patrol linewatch apprehensions measured by 10-hour shifts for the fiscal years 1983 through 1989. The data show that alien apprehensions per 10-hour shift decreased 46 percent after IRCA was passed in November 1986.

Figure 6.1: Border Patrol Linewatch Apprehensions Measured by 10-Hour Shifts

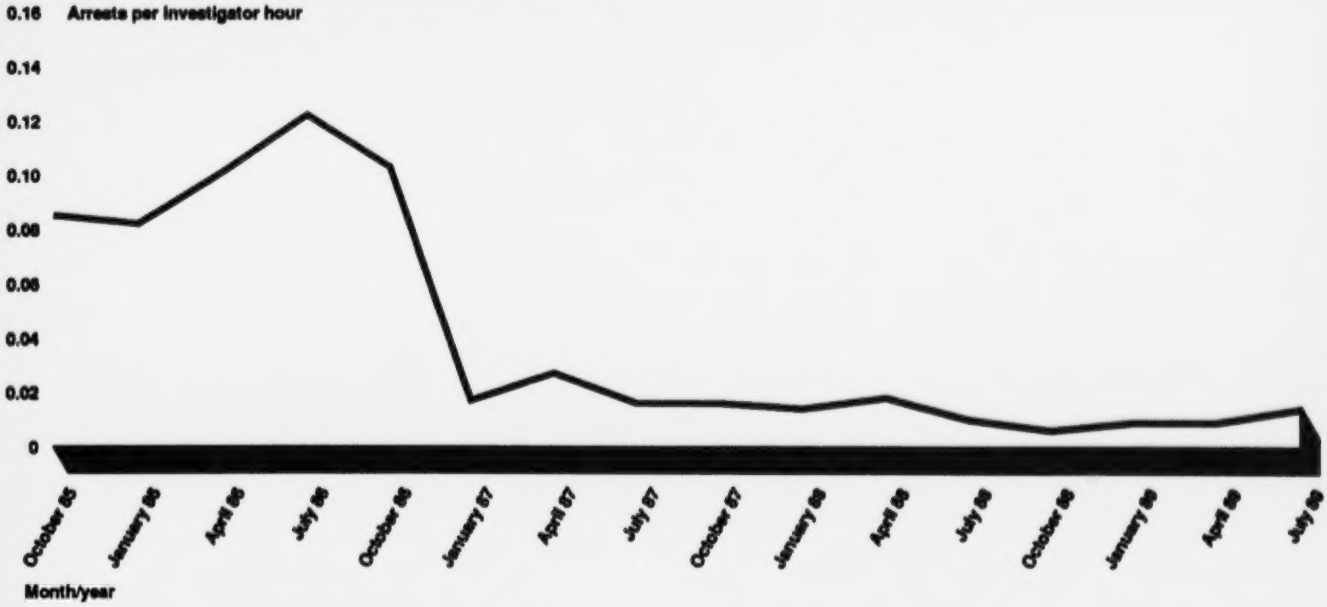


Note: 1989 represents 10 months of data
Source: INS

If employer sanctions reduce the number of aliens employed illegally, then the number of alien arrests, adjusted for the level of enforcement, should decrease. INS records the number of aliens apprehended who were employed illegally per investigator hour.

Figure 6.2 shows that, per investigator hour, INS arrests of aliens who were employed illegally have decreased 59 percent since IRCA's passage.

Figure 6.2: Illegally Employed Alien Arrests Per INS Investigator Hour

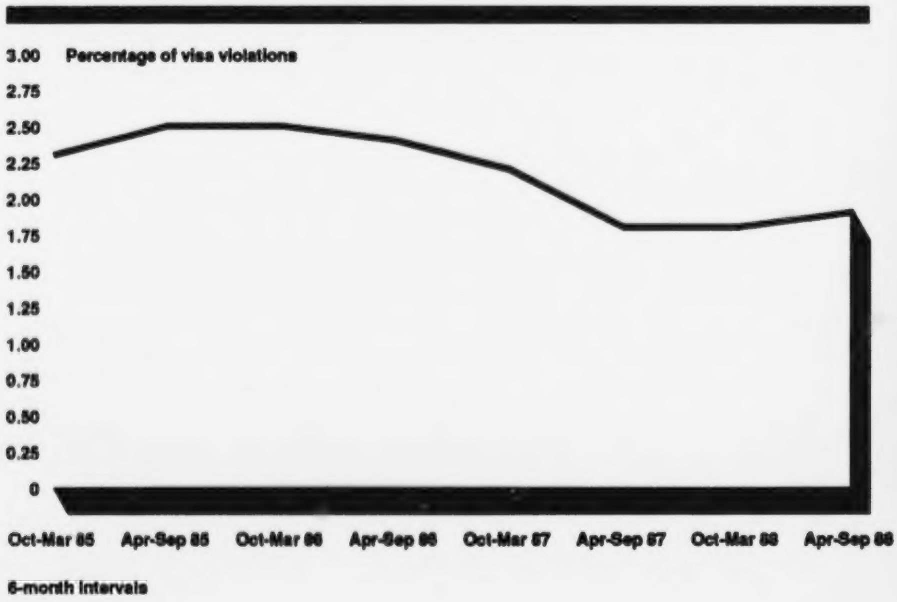


Source: INS.

Reliance on Authorized Workers

If employer sanctions are effectively reducing the number of aliens employed illegally, then the percent of nonimmigrants (visitors) who receive visas to enter the country each year but stay and become illegally employed should decrease. Figure 6.3 represents visa violation rates in fiscal years 1985-88, by 6-month periods. The data show the overall rate at which people were overstaying their visas has dropped 21 percent since the 6-month period ending September 1986.

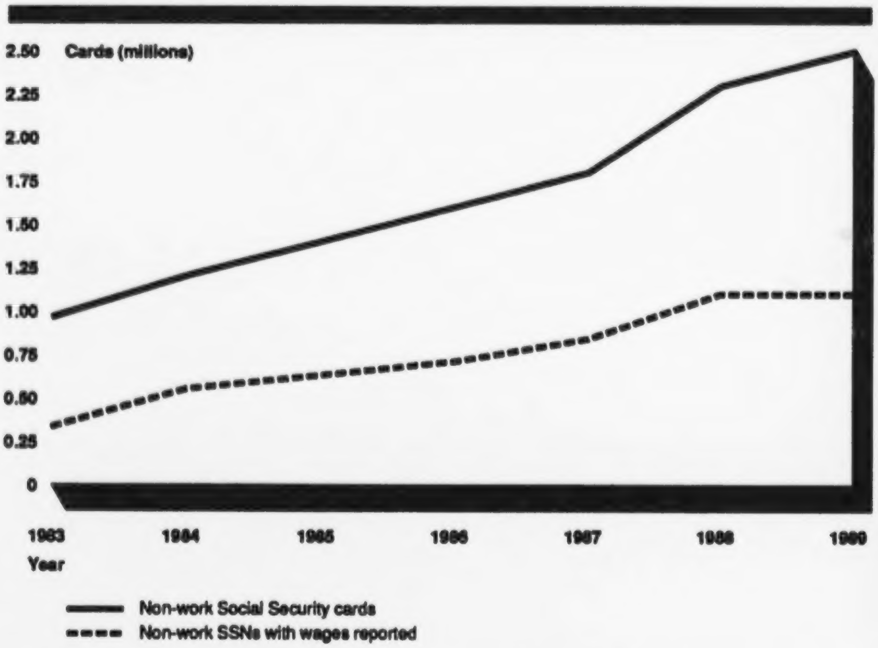
Figure 6.3: Visa Violations: Percentage of Estimated Visa Overstayers to Expected Departures



Source: INS.

The Social Security Administration (SSA) issues special non-work Social Security cards to legal alien nonimmigrants who are not authorized to work but who need the number for other reasons (e.g., to open a bank account). If employer sanctions are effective, the percentage of non-work Social Security numbers with wages reported to SSA should decrease after IRCA. Figure 6.4 shows the number of all non-work Social Security numbers that had wages reported decreased 8 percent following IRCA's enactment. Because there is a 2-year lag in SSA data (1987 wages become available in 1989), the decrease is based on 1 year of post-IRCA data. (See fig. 6.4.)

Figure 6.4: Number of Non-Work Social Security Cards With Wages Reported, 1983-89



Note: There is a 2 year lag between the year wages are earned and the year they are reported to SSA (wages reported in 1989 were earned in 1987).

Source: SSA.

IRCA-Related Employer Costs

Employers in our survey reported that to complete an I-9 took an average of 7.5 minutes. This means that for employers who have labor costs of $10 per hour, each form would cost $1.25 to prepare. For employers with labor costs of $20 per hour, the cost is $2.50.

We estimate that if all of the 4.6 million employers in our survey population had been in full compliance during 1988, completing all the I-9s would have cost about $69 million using a $10 per hour labor cost and $138 million using a $20 per hour labor cost. The actual costs of completing I-9s was considerably less, since only 65 percent of the employers surveyed who were aware of the law and hired one or more employees had fully complied.

Table 6.1 shows the number of I-9s that employers who were aware of the law completed. Employers may also photocopy the I-9 forms and file them for the required period of time.

Table 6.1: Number of I-9s Prepared

Number of I-9s prepared	Percentage of employers
None	26
5 or less	34
6-10	13
11-20	11
21-50	7
51 or more	9

As shown in table 6.1, more than half of the employers said that they prepared fewer than six I-9S.

In addition, IRCA costs employers time and money when they interview job applicants who cannot be hired or when they have to delay hiring because the applicants have to obtain the required work authorization documents. On the basis of our survey, we estimated that 196,000 (7 percent) of the projected 2.9 million employers who responded wanted to hire someone during 1988 but did not because the person could not present a work authorization document. We do not know if the persons not hired were citizens, authorized aliens who lost their documents, or unauthorized aliens who did not have fraudulent or counterfeit documents to show the employer.

Employer Comments on the Law's Burden

Eight hundred and nine employers (or 18 percent of the respondents) wrote comments on the questionnaire. Of these, 44 (or 5 percent) of the comments supported IRCA's enactment, 210 (or 26 percent) were opposed to the law, and the remaining 555 (or 69 percent) were not substantive or were miscellaneous comments. The two most commonly cited reasons for opposing the law were (1) the paperwork burden and (2) problems with documentation. The following are typical of employer views provided in our survey:

- "We have 100-120 people per year for the purpose of picking fruit. Our season lasts for 2 to 3 weeks. . . . Checking this many people for such a short work-time is very difficult. . . . There should be an easier way for growers with perishable fruit to hire legal workers."
- "The new immigration act is just one more of a growing list of rules, regulations, laws, requirements, etc. for a business to comply with. A small business like mine is fast becoming unprofitable because of the cost."

- "I have lost good candidates for employees because they could not get the necessary documents together and found work elsewhere apparently without documents."
- "The I-9 has become an expensive, time-consuming part of doing business. Simplification or elimination would not be missed by most."
- "Of all the multitudes of government forms that I have to process, the I-9 is the most simple and clear-cut."

No Evidence of Frivolous Complaints

According to Chairman Rodino, the congressional conferees were apprehensive that IRCA's antidiscrimination provision might be used by private groups to harass employers and thus be an unreasonable burden on employers.

Using IRCA-related EEOC data and OSC charges filed since the law's passage, we did not find that special interest groups were abusing the law. While a few individuals have filed numerous charges against employers, generally special interest groups have not. Congress included a provision for awarding attorneys' fees to the prevailing party if the losing party's argument "is without reasonable foundation in law or fact." This particular language was intended to discourage lawsuits that harassed employers. As of December 1989, according to a Justice official, no losing party in a case involving IRCA's discrimination provision has had to pay the prevailing party's attorneys' fees.

Conclusions

Nearly all the available data suggest that IRCA has partially achieved its objectives of reducing illegal immigration and employment. Thus, the burden that employer sanctions place on employers, though viewed as cumbersome by some employers, cannot be considered unnecessary. However, more time is needed to determine if IRCA's beneficial effects will be lasting.

- Our survey found that more than half of the employers who are aware of the law and have a basis to judge its effectiveness believed the law had reduced the number of unauthorized aliens working in their industry.
- About 16 percent of aliens apprehended during employer sanctions investigations during August 1989 and September 1989 reported that they had difficulty finding a job because of IRCA's employment verification system.
- Two surveys in Mexico found many people believed the law made it more difficult to find a job in the United States.

- Using statistical models, one private research organization (Urban Institute) concluded that the law has slowed illegal immigration.
- INS' alien apprehension rate, adjusted for resource changes, has decreased since 1986. Our other statistical indicators of employers' reliance on unauthorized aliens also show decreases under IRCA.

It appears that fewer unauthorized aliens are entering the country than would have been without the law, thus making necessary the law's burden.

Because there is no evidence to suggest that IRCA's antidiscrimination provision has been used by private groups to harass employers, it is not an unreasonable burden.

Fiscal Year 1988, 1989, and 1990 INS Budgets for Employer Sanctions

Dollars in thousands

INS office	1988 FTE[a]	1988 Amount	1989 FTE[a]	1989 Amount	1990 FTE[a]	1990 Amount
Border Patrol	81	$4,661	135	$6,184	135	$6,478
Investigations	450	20,142	500	19,721	500	27,117
Anti-Smuggling	34	1,805	38	1,970	34	1,970
Detention and Deportation	218	12,293	242	13,169	218	14,108
Training	7	391	8	428	8	432
Data and Communications	2	6,099	2	5,519	2	5,353
Information and Records	86	2,546	96	2,352	96	2,352
Intelligence	7	264	8	289	8	293
Construction and Engineering	0	3,012	0	3,012	0	3,012
Legal Proceedings	153	7,214	170	8,315	170	8,315
Executive Direction	6	378	7	413	7	420
Administrative Services	28	936	31	1,192	31	1,488
Total	**1,072**	**$59,741**	**1,237**	**$62,564**	**1,209**	**$71,338**

[a] Full-time equivalent positions.

Source: INS.

Survey of Employers' Reactions to the 1986 Immigration Reform and Control Act

U.S. General Accounting Office

Survey of Employers' Reactions to the 1986 Immigration Reform and Control Act

Instructions

The U.S. General Accounting Office, an agency of the Congress, is required by law to gather information on how the Immigration Reform and Control Act of 1986 has affected employers. Your participation in this survey is voluntary, but your frank and honest answers are greatly needed so that we can advise Congress on the problems employers face and recommend any needed improvements.

This questionnaire is anonymous. There is nothing in this form that can identify how you or any other firm responded. In order to ensure your privacy, we ask that you separately return the enclosed post card indicating that you have completed your questionnaire. We need these cards returned so that we can follow up with those who do not respond to our mailing.

The questionnaire should be answered by the **person most knowledgeable about hiring practices at the location to which our cover letter was addressed**. The questions can be easily answered by checking boxes or filling in blanks. The questionnaire should take about 20 minutes to complete. Space has been provided at the end of the questionnaire for any additional comments you may want to make. If needed, additional pages may be attached. If you have any questions, please call Ms. Linda Watson or Mr. Alan Stapleton at (202) 357-1007.

Please return the completed questionnaire in the enclosed pre-addressed, pre-paid envelope within 10days of receipt. Also, do not forget to mail back the post card, separately. Do not enclose the post card in the envelope with the questionnaire. In the event the envelope is misplaced, our return address is:

U.S. GENERAL ACCOUNTING OFFICE
Mr. Alan Stapleton
441 G Street, N.W., Room 3660
Washington, D.C. 20548

Thank you for your help.

Alan Stapleton

Location
N=4,563,000
Chicago - 3.2%
Miami - 1.1%
Los Angeles - 3.8%
New York City - 4.7%
CA, LA excluded - 8.5%
Texas - 8.0%
Rest of West - 11.1%
Other states - 58.7%
Agriculture - 1.1%

Industry
N=4,563,000
High - 13.4%
Medium - 24.3%
Low - 61.2%
Agriculture - 1.1%

Definitions for This Survey

Firm—The employer's establishment, at the location to which our cover letter is addressed.

Authorized Alien—A person other than one naturalized or born in the United States who has documents authorizing employment in the United States.

Unauthorized Alien—A person other than one naturalized or born in the United States who does **not** have documents authorizing employment in the United States.

A. Hiring

a. Is the address to which this questionnaire was sent the only one at which your firm does business, or does your firm have other locations? **(Check one.)**

1. ☐ This is the only location **(Go to Question 1, page 2.)**
2. ☐ Firm has other locations **(Continue to b, below.)**

b. Where does hiring take place for employees who work at this location? **(Check one.)**

1. ☐ All employees are hired here **(Go to Question 1, page 2.)**
2. ☐ Some employees are hired here, some at another location **(Go to Question 1, page 2. In answering all the questions about hiring, please refer only to hiring that takes place at *this location*.)**
3. ☐ All employees are hired at another location **(Go to Note below.)**

Note: If all hiring for this location is done at another place, please write the name, title, firm, and address of the person who is responsible for hiring activities. Please return the entire package (including the post card) to us in the enclosed pre-paid envelope so that we can remove your name from our mailing list. Thank you for your help.

Name: ____________________
Title: ____________________
Firm: ____________________
Address: ____________________
____

B. NEW HIRES AND APPLICANTS

1. About how many new employees did your firm hire during 1988? (ENTER NUMBER, INCLUDING PART-TIME EMPLOYEES. IF NONE, ENTER "0" AND SKIP TO QUESTION 11.)

N=4,393,000 New hires in 1988

0 - 34.4%
1-3 - 28.9%
4-25 - 28.5%
26+ - 8.2%

2. For about how many of these new employees hired during 1988 did your firm complete Employment Eligibility Verification (I-9) Forms? (CHECK ONE.)

N=2,929,000

57.1% 1. All (SKIP TO QUESTION 5.)

3.1% 2. Most
1.5% 3. About half
1.5% 4. Some
→(SKIP TO QUESTION 4.)

36.8% 5. None (CONTINUE TO QUESTION 3.)

3. If your firm did not complete an I-9 form for any new employees in 1988, which of the following reasons, if any, explains why. (CHECK ALL THAT APPLY.)

N=1,201,000

58.2% 699,000 1. Did not know what I-9 forms were

25.7% 309,000 2. Did not have any I-9 forms

14.2% 170,000 3. Did not feel that I should have to do this

2.0% 24,000 4. Too much difficulty obtaining I-9 forms

1.0% 12,000 5. The I-9 form takes too long to complete

.9% 10,000 6. The I-9 forms were completed by another organization

24.5% 294,000 7. Other (specify) ________________

SKIP TO QUESTION 5.

4. Which of the following reasons, if any, explains why I-9 forms were completed for some of the employees hired in 1988 but not for others? (CHECK ALL THAT APPLY.)

N=1,379,000

6.3% 87,000 1. Only completed I-9 forms if person was unknown to firm

2.3% 31,000 2. Only completed I-9 forms for persons who were suspected of being unauthorized aliens because of foreign appearance or accent

1.3% 18,000 3. Some I-9 forms were completed by another organization

1.5% 21,000 4. Only completed I-9 forms for persons authorized to work

10.3% 142,000 5. Other (specify) ________________

5. During 1988, were there any people your firm had wanted to hire, but who were not hired, because they could not present documents showing eligibility to work in the United States? (CHECK ONE.)

N=2,915,000

6.7% 1. Yes

91.0% 2. No

2.2% 3. Don't know

6. In 1988, did your firm look at documents showing eligibility to work in the United States before making a job offer to an applicant? (CHECK ONE.)

N=2,904,000

78.0% 1. No (SKIP TO QUESTION 8.)

3.5% 2. Yes, of some applicants
.4% 3. Yes, of about half the applicants
2.6% 4. Yes, of most applicants
15.6% 5. Yes, of all applicants
→(CONTINUE TO QUESTION 7.)

YOUR ANSWERS ARE ANONYMOUS.

7. Which of the following reasons, if any, explains why your firm looked at job applicants' work eligibility documents before making a job offer? (CHECK ALL THAT APPLY.)

N=787,000

21.2%	**167,000**	1\. It is easier to ask for documents before hiring someone
27.2%	**214,000**	2\. It wastes my firm's time and money to offer a job to someone who cannot legally be hired
9.8%	**77,000**	3\. Applicant's foreign appearance or accent made the firm suspect the person might be an unauthorized alien
50.9%	**401,000**	4\. My firm believed this is required by law
2.1%	**16,000**	5\. Other (specify) ________________

8. It is impossible for employers to know for sure if the work eligibility documents they are shown are genuine. Do you believe that any of the employees your firm hired during 1988 presented documents that might have been fraudulent or counterfeit? (CHECK ONE.)

N=2,845,000

.5%	1\. Definitely yes
1.1%	2\. Probably yes
5.1%	3\. Uncertain
20.1%	4\. Probably no
50.7%	5\. Definitely no
22.5%	6\. No basis to judge

9. About how many minutes does it generally take your firm to complete an I-9 form? (IF YOUR FIRM DID NOT COMPLETE ANY I-9 FORMS, PLEASE PLACE AN X IN THE SPACE BELOW.)

Average 7.5 ______ Minutes to complete the I-9 form

10. About how many I-9 forms did your firm complete for employees hired during 1988? (ENTER NUMBER OF FORMS.)

Average 24 ______ I-9 forms completed

11. Since November 6, 1986, has the Immigration and Naturalization Service (INS) visited your firm for any reason? (CHECK ONE.)

N=4,489,000

3%	1\. Yes (CONTINUE TO QUESTION 12.)
94%	2\. No —(SKIP TO QUESTION 13.)
3%	3\. Don't know —(SKIP TO QUESTION 13.)

12. For which of the following reasons, if any, did INS visit your firm? (CHECK "YES," "NO," OR "DON'T KNOW" FOR EACH REASON.)

REASONS FOR INS VISIT	Yes (1)	No (2)	Don't know (3)
1\. To educate your firm about the 1986 immigration law **N=127,000**	**86.1**	**10.4**	**3.5**
2\. To review I-9 forms **N= 88,000**	**65.3**	**25.8**	**8.9**
3\. To determine if your firm employed unauthorized aliens **N= 63,000**	**25.3**	**54.9**	**19.8**
4\. Other (please specify) ____ ________________ **N= 17,000**	**50.1**	**26.8**	**23.2**

13. Does your firm expect to be the subject of an INS inspection during the next 12 months? (CHECK ONE.)

N=4,422,000

.3%	1\. Definitely yes
.8%	2\. Probably yes
6.8%	3\. Uncertain
26.1%	4\. Probably no
29.2%	5\. Definitely no
36.8%	6\. No basis to judge

YOUR ANSWERS ARE ANONYMOUS.

14. Even employers who fully comply with the law may have some employees who are unauthorized aliens. Do you suspect that any of your current employees might be unauthorized aliens? (CHECK ONE.)

N=4,456,000

.1%	1. Definitely yes	→(CONTINUE TO QUESTION 15.)
.6%	2. Probably yes	
1.5%	3. Uncertain	→(SKIP TO QUESTION 16.)
11.6%	4. Probably no	
83.0%	5. Definitely no	
2.7%	6. No basis to judge	

15. About how many of the employees your firm suspects of being unauthorized aliens were hired before November 7, 1986? (CHECK ONE.)

N=35,000

20.6%	1. None
33.2%	2. Some
3.0%	3. About half
9.1%	4. Most
19.0%	5. All
13.5%	6. Don't know

16. During 1988, did your firm fire or lay off any employees? (CHECK ONE.)

N=4,462,000

40.0%	1. Yes (CONTINUE TO QUESTION 17.)	
59.3%	2. No	→(SKIP TO QUESTION 18.)
.7%	3. Don't know	

17. Which of the following reasons, if any, explains why employee(s) were fired or laid off during 1988? (CHECK ALL THAT APPLY.)

N=1,805,000

44.5%	1. Not enough work available
68.1%	2. Employee did not adequately perform the work
.2%	3. Employee was suspected of being an unauthorized alien because of foreign appearance or accent
1.9%	4. Employee lacked proper work eligibility documents
6.0%	5. Other (specify) ______________

C. REACTIONS TO THE 1986 IMMIGRATION LAW

18. Prior to receiving this questionnaire, how aware, if at all, was your firm that a new immigration law was passed in 1986 calling for penalties (sanctions) against employers who knowingly hire unauthorized aliens? (CHECK ONE.)

N=4,470,000

13.6%	1. No awareness (SKIP TO QUESTION 26.)	
16.0%	2. Somewhat aware	→(CONTINUE TO QUESTION 19.)
23.9%	3. Moderately aware	
24.2%	4. Greatly aware	
18.9%	5. Very greatly aware	
3.0%	6. Don't know (SKIP TO QUESTION 26.)	

19. From which of the following sources of information, if any, have you obtained information about employer penalties (sanctions) in the 1986 immigration law? (CHECK ALL THAT APPLY.)

N=3,787,000

27.3%	1,034,000	1. Immigration and Naturalization Service (INS) Handbook for Employers
38.8%	1,468,000	2. I-9 Form (Employment Eligibility Verification)
8.5%	322,000	3. INS regulations
18.2%	689,000	4. Trade association or Chamber of Commerce
57.2%	2,168,000	5. Radio, television, newspapers, magazines
15.4%	582,000	6. Other (specify) ______________

20. Based on the information your firm has reviewed, how clear or unclear are each of the following provisions of the 1986 immigration law? (CHECK ONE BOX IN EACH ROW.)

PROVISIONS OF LAW	Very clear (1)	Generally clear (2)	Marginally clear (3)	Generally unclear (4)	Very unclear (5)	No basis to judge (6)
1. The documents to be presented as evidence of authorization to work N=3,565,000	33.5	26.4	12.5	7.5	4.5	15.6
2. INS's Employment Eligibility Verification Form (I-9) requirements N=3,547,000	32.0	26.1	10.4	7.9	7.2	16.5
3. Restrictions on employment of unauthorized aliens N=3,544,000	27.0	26.6	16.0	8.9	6.5	15.0
4. Employer exemption from penalties for hiring that occurred before November 7, 1986 N=3,533,000	18.7	24.7	15.0	13.4	10.0	18.3
5. Prohibitions against employers (with four or more employees) who discriminate N=3,542,000	18.8	22.0	14.8	14.7	9.4	20.2
6. Deferral of penalties for seasonal agricultural employers N=3,504,000	8.1	12.4	13.6	14.5	12.1	39.3

21. The INS has conducted a campaign to educate employers about the employer sanctions provisions of the 1986 immigration law. To do this, INS held meetings in cities across the country and made announcements in the newspapers, on TV, and on the radio. To what extent, if any, has your organization's familiarity with the immigration law increased due to INS's education efforts? (CHECK ONE.)

N=3,641,000

2.4%	1.	Very great extent
8.8%	2.	Great extent
14.1%	3.	Moderate extent
20.1%	4.	Some extent
39.8%	5.	Little or no extent
14.7%	6.	No basis to judge

22. In your opinion, to what extent, if at all, has the employer sanctions provision of the 1986 immigration law been effective in reducing the number of aliens working without proper work authorization documents in your industry? (CHECK ONE.)

N=3,646,000

2.5%	1.	Very great extent
6.2%	2.	Great extent
8.2%	3.	Moderate extent
7.8%	4.	Some extent
20.0%	5.	Little or no extent
55.2%	6.	No basis to judge

YOUR ANSWERS ARE ANONYMOUS.

23. Which of the following actions, if any, was taken at this location as a result of your firm's understanding of the 1986 immigration law? (CHECK "YES" OR "NO" FOR EACH ACTION.)

IMPORTANT: CHECK "YES" ONLY IF ACTION TAKEN WAS A RESULT OF THE 1986 IMMIGRATION LAW.

ACTIONS TAKEN		Yes (1)	No (2)
1. Paid an attorney to explain the new law	N=3,261,000	3.1	96.9
2. Provided training to supervisory employees on the new law	N=3,290,000	23.8	76.2
3. Began to hire only persons born in the United States	N=3,181,000	14.7	85.3
4. Began a practice to not hire persons who have temporary work eligibility documents (for example, temporary resident aliens)	N=3,166,000	13.0	87.0
5. Began to examine documents of only those current employees whose foreign appearance or accent led the firm to suspect they might be unauthorized aliens	N=3,166,000	8.6	91.4
6. Began a practice to not hire job applicants whose foreign appearance or accent led the firm to suspect they might be unauthorized aliens	N=3,163,000	6.6	93.4
7. Increased wages to attract authorized workers	N=3,167,000	3.6	96.4
8. Decreased wages of unauthorized workers to compensate for costs associated with employer sanctions, such as fines and paperwork	N=3,169,000	0.2	99.8
9. Began or increased the use of state employment agency to find workers	N=3,169,000	7.2	92.8
10. Began or increased the use of contract workers for work previously done by employees	N=3,166,000	3.0	97.0
11. Increased price of goods or services	N=3,176,000	3.6	96.4
12. Began a practice to not hire persons who present Puerto Rican birth certificates	N=3,174,000	1.8	98.2
13. Other (specify) ______________________	N= 426,000	18.1	81.9

YOUR ANSWERS ARE ANONYMOUS.

26. Which of the following actions, if any, do you think the federal government should consider regarding hiring practices? (CHECK ONE BOX IN EACH ROW.)

ACTIONS	Definitely yes (1)	Probably yes (2)	Undecided (3)	Probably no (4)	Definitely no (5)	No basis to judge (6)
1. Provide a way for employers to quickly get answers to their questions about the new immigration law N=4,179,000	55.3	22.1	4.3	1.0	0.5	16.8
2. Revise the I-9 form to list all acceptable work eligibility documents N=4,180,000	32.2	23.4	10.6	2.8	1.8	29.3
3. Provide free I-9 forms at all U.S. Post Offices N=4,183,000	47.5	23.9	5.7	2.4	1.6	18.6
4. Print I-9 forms and instructions in other languages N=4,188,000	13.2	15.1	18.4	9.9	13.4	30.0
5. Reduce the variety of work authorization documents that INS issues to aliens N=4,091,000	18.5	19.0	18.2	5.2	2.3	36.8
6. Establish a system for employers to contact INS to verify if an alien is authorized to work N=4,159,000	36.6	28.8	8.6	3.9	2.5	19.6
7. Establish a system so employers could contact the Social Security Administration to verify that job applicants' Social Security numbers are valid N=4,200,000	45.2	28.2	5.4	2.5	3.7	15.1
8. Make the Social Security card the only work eligibility document persons are permitted to present N=4,181,000	23.2	16.8	18.5	11.4	10.3	19.8
9. Make the documents INS issues the only work eligibility document aliens are permitted to present N=4,082,000	15.9	17.8	22.0	9.4	7.0	27.9
10. Other (specify) ______ N=302,000	10.1	1.0	2.1	0.2	0.2	86.4

YOUR ANSWERS ARE ANONYMOUS.

D. BACKGROUND

25. In which of the following time periods did your firm start business? (CHECK ONE.)

N=4,436,000

93.3%	1. Before November 1986
4.5%	2. November 1986 through December 1987
1.9%	3. 1988
0%	4. 1989
0.2%	5. Don't know

26. About how many of your firm's employees were at this location, on December 31, 1988? (ENTER NUMBER, INCLUDING PART-TIME EMPLOYEES.)

N=4,353,000

1-3 34.1% _____ Employees on December 31, 1988
4-25 48.2%
26+ 17.6%

27. Please estimate the number of these employees at this location, on December 31, 1988, in each of the following categories. (ENTER NUMBERS. THE TOTAL SHOULD EQUAL THE NUMBER OF EMPLOYEES ENTERED IN QUESTION 26.)

		Number of employees
1. Black (Non-Hispanic)	9%	8,300,000
2. Hispanic	9%	8,545,000
3. Asian	3%	2,671,000
4. White (Non-Hispanic)	78%	70,710,000
5. Other (specify) ____________	1%	929,000
TOTAL	(sum of above)	91,155,000

E. COMMENTS

28. If you have any comments on this survey, or on the 1986 immigration law, please write them in the space below. REMEMBER -- YOUR ANSWERS ARE ANONYMOUS.

PLEASE RETURN THE COMPLETED QUESTIONNAIRE IN THE ENCLOSED PRE-ADDRESSED, PRE-PAID ENVELOPE.

ALSO, PLEASE RETURN THE POSTCARD, SEPARATELY.

THANK YOU FOR YOUR HELP.

YOUR ANSWERS ARE ANONYMOUS.

GGD/MS/3-89

Technical Appendix

Employer Survey

As part of our review of the implementation of IRCA, we wanted to determine the effects of the new law as perceived by U.S. employers. To accomplish this, we mailed a questionnaire to a stratified random sample of employers to gather information about their (1) understanding of the law, (2) employment practices, and (3) costs to comply with the I-9 form requirements. Our sample was selected from a private marketing service's database.[1] We selected our sample from the database as it was constituted in February 1989. On that date, the database contained approximately 5.5 million employers.

Sampling Strategy

To draw our sample, we first stratified the universe of employers into a 56-cell matrix based on geographic area (16 strata) and industry (3 strata) with a separate category for agriculture (8 strata). We designed a sample that is nationwide in scope but which oversamples employers from areas where a high proportion of Hispanics live and work. We oversampled to represent these areas adequately. The stratification includes the following cities and states that have a high Hispanic and Asian population: Los Angeles, New York City, Chicago, Miami, four small cities in Texas, California (excluding Los Angeles), Texas, New Mexico, Arizona, Colorado, and Hawaii. About one-third of the immigrants in the United States in 1980 lived in the four large cities in the sample. The two other geographic strata included the remaining western states and the rest of the United States.[2] Geographic areas were stratified based on 1980 census data. For purposes of analysis, the data for the 16 geographic strata were combined into 8 strata: (1) Los Angeles; (2) New York City; (3) Chicago; (4) Miami; (5) California, except Los Angeles; (6) Texas, including the four small cities in Texas; (7) rest of the west, which includes New Mexico, Arizona, Colorado, Hawaii, and the remaining western states; and (8) rest of the United States.

We also grouped the employers in each of the 16 geographic strata into three approximately equal categories—those industries that had high, medium, and low levels of Hispanic and Asian employees as determined from the 1980 census data and County Business Patterns for 1986. We assumed that employers' knowledge and compliance with the law may vary based on the level of immigrants employed in the industry.

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[1] Several other databases exist that provide information about businesses in the United States, such as those compiled by the Internal Revenue Service, U.S. Census Bureau, and SBA. We chose the marketing service for the following reasons: (1) the data were purported to be more current; (2) the database identified each business location with an address, phone number, and the name of a business contact; and (3) the database could be accessed easily.

[2] Rest of the west includes Alaska, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

We selected a separate sample of agricultural employers. Agricultural employers' knowledge and compliance with the law may be different from other employers because of the law's exemption from sanctions for employers of seasonal agricultural employees until December 1, 1988. However, agricultural employers represented only about 1 percent of our universe sample, and, for most of the analyses presented in this report, employers in the agricultural strata were generally not different from other employers. Consequently, the employer responses for the agricultural strata are not reported as separate analyses but are always in the total.

Due to technical difficulties and related issues concerning proprietary rights, we agreed to have the private marketing service draw the sample and certify that the sample selection procedure it used was a random one. We did not verify the procedure the private marketing service used.

We based our cell sample sizes on a confidence level of 95 percent with a sampling error of 5 percent for nine major categories (superstrata). Generally, this resulted in required sample sizes of between 400 and 500 employers per cell. Our target population for the survey was employers who are in business and have at least one employee. In our 1987 survey of employers, we found that approximately 30 percent of the employers who were listed on the database were no longer in business or had no employees. For this survey, we oversampled in each cell by approximately 30 percent to allow for a similar rate of unusable responses. Because of the size of the universe for "other industries and states," we deliberately oversampled in this category in case a more detailed analysis of the responses from this group was necessary.

Survey Response

We mailed our questionnaire to 9,491 employers across the country in late April 1989. We did a follow-up mailing in June 1989. Finally, in August 1989, we telephoned those employers who had not responded and sent those who agreed to respond a third questionnaire.

Of the 9,491 questionnaires mailed, 4,362 completed, usable questionnaires were returned. Our adjusted sample (subtracting from the original sample those employers whom we considered to be no longer in business or who could not be located and those who indicated they had no employees or that hiring was done elsewhere) was 6,317. Given the number of completed and usable questionnaires returned (4,362), this provided us with a response rate of 69 percent. Table III.1 represents information on employer questionnaire disposition for each stratum.

Table III.1: Employer Questionnaire Disposition for Each Stratum

Stratum	Universe	Sample	Hiring elsewhere or 0 employees	Undelivered/out of business	Adjusted sample	Response
Chicago-high	14,922	296	26	26	244	186
Chicago-low	115,659	239	36	46	157	100
Chicago-medium	38,148	179	20	36	123	96
Chicago	168,729	714	82	108	524	382
Miami-high	13,010	218	27	43	148	93
Miami-low	16,437	243	34	51	158	115
Miami-medium	26,614	254	27	69	158	82
Miami	56,061	715	88	163	464	290
LA-high	31,003	434	67	73	294	193
LA-low	62,835	295	49	48	198	142
LA-medium	112,678	314	48	73	193	112
Los Angeles	206,516	1,043	164	194	685	447
NYC-high	28,801	236	18	44	174	96
NYC-low	66,282	220	28	30	162	93
NYC-medium	145,870	259	31	52	176	94
New York City	240,953	715	77	126	512	283
CA-high	62,633	521	90	97	334	246
CA-low	236,997	421	83	70	268	194
CA-medium	172,824	418	71	84	263	188
California	472,454	1,360	244	251	865	628
C Christi-high	1,659	18	1	3	14	8
C Christi-low	4,689	18	4	3	11	6
C Christi-medium	2,882	21	1	5	15	7
El Paso-high	2,137	39	4	8	27	18
El Paso-low	3,891	34	9	4	21	16
El Paso-medium	3,768	29	4	9	16	9
Mc Allen-high	860	27	2	9	16	16
Mc Allen-low	3,463	23	3	7	13	11

(continued)

Stratum	Universe	Sample	Hiring elsewhere or 0 employees	Undelivered/out of business	Adjusted sample	Response
Mc Allen-medium	1,286	27	2	8	17	13
S Antonio-high	5,651	59	12	14	33	18
S Antonio-low	13,885	59	9	8	42	33
S Antonio-medium	7,537	55	6	8	41	30
Texas-high	76,894	214	29	49	136	84
Texas-low	194,882	266	42	45	179	129
Texas-medium	101,786	245	31	39	175	107
Texas	425,270	1,134	159	219	756	505
Arizona-high	15,546	54	5	5	44	29
Arizona-low	35,567	55	9	11	35	30
Arizona-medium	20,557	59	9	2	48	26
Colorado-high	9,524	43	5	11	27	19
Colorado-low	42,798	46	6	10	30	22
Colorado-medium	37,998	52	7	9	36	29
New Mexico-high	7,559	61	10	12	39	27
New Mexico-low	14,934	63	14	16	33	22
New Mexico-medium	11,304	50	5	5	40	22
Hawaii-high	2,280	84	12	16	56	40
Hawaii-low	9,567	89	20	17	52	42
Hawaii-medium	12,558	120	21	28	71	57
Rest west-high	43,021	73	15	12	46	32
Rest west-low	243,749	84	8	17	59	38
Rest west-medium	65,283	59	3	14	42	27
Rest of west	572,245	992	149	185	658	462
Rest U.S.-high	412,205	470	81	66	323	245
Rest U.S.-low	2,338,756	536	103	82	351	242
Rest U.S.-med	538,540	384	67	59	258	198
Other states	3,289,501	1,390	251	207	932	685
CA-agri.	6,054	789	117	126	546	415
TX-agri.	3,278	177	26	35	116	88
AZ-agri.	476	66	9	19	38	27
CO-agri.	780	21	8	0	13	7

(continued)

Stratum	Universe	Sample	Hiring elsewhere or 0 employees	Undelivered/out of business	Adjusted sample	Response
NM-agri.	199	36	5	8	23	18
Rest west-agri.	4,702	96	13	33	50	34
Hawaii-agri.	428	59	10	14	35	33
Rest U.S.-agri.	51,900	184	56	28	100	58
Agricultural employers	67,817	1,428	244	263	921	680
U.S. Total	**5,499,546**	**9,491**	**1,458**	**1,716**	**6,317**	**4,362**

The sampled employers returned the questionnaires over a 5-month period. We analyzed the data to determine whether trends existed according to when the questionnaires were returned. The purpose of this analysis was to determine if response time was related to important variables in our analysis. If response time was not related to important analysis variables, then we could generalize our results to the entire universe of respondents and nonrespondents. The logic of this approach is that we could have stopped adding newly received questionnaires to our database at any time. Responses received after that time would be nonresponses. For example, if we had stopped after 20 batches of data had been keypunched, the questionnaires that were later sent in the 21st batch would have been "nonrespondents." If we had found the responses in this batch to be similar to previous responses, then it would be reasonable to assume that future questionnaires, should they be received, would be similar to current questionnaires.

We performed this analysis at several points in time, comparing the questionnaires received before an arbitrary date to those received after that date. We compared the groups by geographic region, size of the firms as represented by number of employees, percentage of Hispanic and Asian employees, and the combined discrimination questions. We found no differences among the groups on any of the factors examined. Based upon this information, we assumed that our sample of respondents did not differ significantly from the nonrespondents.[3] Therefore, we generalized our findings to the entire universe of employers without adjusting for nonresponse.

However, approximately 15 percent of our original sample was from firms that had no employees or did not hire at the location that received the questionnaire. We felt that these firms should not be represented in our survey results. Therefore, we eliminated them from our sample

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[3] Since we did not poll nonrespondents, we cannot verify this assumption.

(along with 23 cases in which the firm may have misunderstood the instructions) and adjusted the universe that we can project to only those firms with one or more employees who hire at the local level. This universe is approximately 4.56 million employers.

Sampling Errors

All sample surveys are subject to sampling error, i.e., the extent to which the results differ from what would be obtained if the whole population had received and returned the questionnaire. The size of the sampling errors depends largely on the number of respondents and the amount of variability in the data. For the employer survey, the sample sizes were chosen to produce a sampling error of less than 5 percent at the 95 percent confidence level. Sampling errors for analyses discussed in this report are within the design parameters, except as shown in table III.2.

Table III.2: Sampling Error Calculations for Questions Where the Error Exceeded 5 Percent

Page of text	Question	Estimate	Lower bound	Upper bound
41	Number of new employees hired by employers who began a practice to not hire persons because of foreign appearance or accent	1,100,000	700,000	1,400,000
41	Number of new employees hired by employers who, as result of their understanding of IRCA, applied the law's employment verification system only to foreign-looking or foreign-sounding persons	2,200,000	1,600,000	2,800,000
43	Number of new employees hired by employers who began a practice to hire only persons born in the U.S. or not hire persons with temporary work documents	4,900,000	3,600,000	6,100,000
43	Percentage of employers who said their understanding of IRCA caused them to begin hiring only U.S.-born persons and who had no Hispanic employees	76	70	82
44	Percentage of employers in heavily Hispanic areas who said they began to hire only U.S.-born persons as a result of their understanding of IRCA and who had no Hispanic employees	54	47	61

Nonsampling Errors

In addition to sampling errors, surveys can also be subject to other types of systematic error or bias that can affect results. This is especially true when respondents are asked to respond to questions about an illegal activity. Lack of understanding of the issues can also result in systematic error. Bias can affect both response rates and the way in which particular questions are answered by respondents. It is not possible to assess the magnitude of the effect of biases, if any, on the results of this survey.

When respondents were asked to report their hiring and employment practices, it is likely that at least some of those who were not conforming to the law would decide not to respond to the survey so as to avoid lying about their behavior or reporting illegal behavior. To the extent that this occurs, the proportion of discrimination related to the law is underestimated by the survey results. To some unknown extent, this group's failure to respond is affected by those who think they are violating the law and do not want to lie or risk revealing "illegal behavior." A misunderstanding of the law could lead to their failure to respond. Of course, survey recipients in general can fail to respond for a wide variety of reasons. Bias occurs when one group of respondents—in this case, those who are engaging in illegal behavior—respond at different rates than others.

Some of those who respond to the survey and who are engaging in illegal behavior may report that their conduct conforms with the law when in fact it does not. This bias also results in an underestimation of illegal behavior.

The effect of bias that could result from a lack of understanding of the provisions of the law coupled with the desire to provide the socially acceptable response is less clear. Some respondents who want to provide the "right" answers may have an incorrect notion of right because they misinterpret the law. For example, some respondents may think that the law requires that they hire only persons born in the United States, so they mark "yes" to the question about this behavior on the questionnaire though they may not make this distinction in actual hiring. This type of bias could be in either direction in terms of affecting the incidence of discrimination. Further, misinterpretation could relate to one or several aspects of the law.

In addition, it may be that some respondents untruthfully claimed to engage in discriminatory practices. This is possible if they were motivated by a desire to have GAO make a discrimination finding that could lead to eventual repeal of employer sanctions.

Projected Response for Selected Figures

Table III.3 provides the projected employer universes used in the figures listed.

Table III.3: Employer Universes for Selected Figures

Figure number	Column	Estimated number
3.2	Chicago	146,000
	Miami	49,000
	Los Angeles	174,000
	New York City	213,000
	California (excluding Los Angeles)	386,000
	Texas	363,000
	Rest of the west	504,000
	Other states	2,677,000
3.3	Chicago	146,000
	Miami	49,000
	Los Angeles	174,000
	New York City	213,000
	California (excluding Los Angeles)	386,000
	Texas	363,000
	Rest of the west	504,000
	Other states	2,677,000
3.4	Chicago	146,000
	Miami	49,000
	Los Angeles	174,000
	New York City	213,000
	California (excluding Los Angeles)	386,000
	Texas	363,000
	Rest of the west	504,000
	Other states	2,677,000
3.5	National origin discrimination:	
	Industries with high roportions of Hispanics and Asians	611,000
	Industries with medium proportions of Hispanics and Asians	1,108,000
	Industries with low proportions of Hispanics and Asians	2,794,000
	Citizenship discrimination:	
	Industries with high proportions of Hispanics and Asians	611,000
	Industries with medium proportions of Hispanics and Asians	1,108,000
	Industries with low proportions of Hispanics and Asians	2,794,000
3.6	National origin:	
	1 to 3 employees	1,486,000
	4 to 25 employees	2,099,000
	26 or more employees	768,000

(continued)

Figure number	Column	Estimated number
	Citizenship:	
	1 to 3 employees	1,486,000
	4 to 25 employees	2,099,000
	26 or more employees	768,000
3.15	Make SSN only work eligibility document:	
	Discriminators	849,000
	Nondiscriminators	3,329,000
	Establish system to contact INS to verify:	
	Discriminators	843,000
	Nondiscriminators	3,313,000
	Establish system to contact SSA to verify SSN:	
	Discriminators	845,000
	Nondiscriminators	3,353,000

Hiring Audit

Overview of Technique

The objective of the hiring audit was to observe employers' behavior to make inferences about whether persons who look and/or sound foreign are treated differently when seeking employment compared to individuals who do not look or sound foreign. Pairs of jobseekers were sent into the labor market who were matched on a defined set of "job-relevant" characteristics but who were different in one aspect of appearance and speech. How far the individual jobseekers progressed and what differences occurred in the hiring process were recorded and compared for each member of the pair. Statistical analysis then permitted estimation of disparate treatment.

Hiring Audit Locations

The hiring audit took place in two cities—San Diego and Chicago. The cities were selected because of their size, labor market characteristics, demographic composition, and geographic location. Specifically, these two cities were selected because they met the following criteria:

- They were large enough to have sufficient numbers of entry-level jobs to meet the required sample size of the study in a few weeks.
- They each had a large Hispanic population.
- They had unemployment rates equal to or lower than the national average for the entry-level jobs selected for the audit.
- They were located in different regions of the country.

The criteria were developed to ensure a sufficient pool of jobs with a relatively low unemployment rate to increase the likelihood of job offers for the hiring audit "testers" (individuals recruited to apply for the jobs).

Selection of Testers

Sixteen male college students were recruited in Chicago and San Diego to be testers, resulting in 8 pairs of testers (4 pairs in each city). Each pair consisted of an Anglo and a Hispanic. The testers were matched as closely as possible on attributes that would be relevant to employment potential such as age, education, work experience, and oral communication skills. An attempt was made to assure that both members of each pair would appear to the employer as equally qualified. The only dimension that would appear different to the employer would be that one member was foreign-looking and/or foreign sounding.

The Sampling Strategy

The sample size was determined by the availability of resources; Urban Institute determined that approximately 300 to 350 audits could be completed within the budget constraints and the required time frame. This would be accomplished by using four pairs of testers in each of the cities.

To evaluate whether 300 audits would yield sufficient statistical power to detect substantively significant levels of discrimination, GAO carried out a number of expected precision calculations. We found that under the assumptions (1) that matching was moderately effective (i.e., Pearson correlation between binary outcomes of matched pair members=0.5) and (2) that clustering of outcomes within matched pairs was small (i.e., intracluster correlation coefficient=0), a sample of 300 audits was sufficient to detect, with a probability of at least 0.80, a 10-percentage point difference in the employment chances of Anglos and Hispanics.

The study sampled low-skill, entry-level jobs requiring limited experience. They are the typical jobs that would be filled by a high school graduate in the 20- to 24-year age range. Not all jobs at the low-skill entry level were appropriate for this study. Numerous jobs were judged to be ineligible for sampling because they required credentials such as special driver's licenses, equipment such as a tool chest, were with the government, or could only be obtained through an intermediary.

The principal consideration in drawing the sample of employers and job openings was to ensure randomness. Random samples require that the universe be defined so that each of the job vacancies in the selected occupations had an equal chance of being drawn. This requirement led to newspaper want ads as the only job vacancy universe feasible for this study. The job advertisements were randomly selected from major newspapers in each of the cities. A number of ads did not lead to audits, resulting in a nonresponse rate of about one-third. The main reasons for the nonresponse were that the job had already been taken, testers could not make contact with the employers, both testers were screened out on the phone, or an exclusion was discovered after initial contact.

Design Implementation

Testers alternated the order in which members of the pair applied for jobs. There were 302 completed valid audits (job was available and tester made contact with potential employer). There were an additional 19 audits that were terminated prematurely because of special circumstances. For example, if an employer required that a test be taken, the audit was terminated because we would be unable to assure that both testers scored similarly. In addition, 39 audits were truncated because they had started in the last 2 weeks of the study, and the employer did not make a job offer decision for at least one tester. For terminated and truncated audits, data to the decision point of termination (e.g., whether unfavorable treatment at application or interview stage) were used.

Analysis and Statistical Significance

The analysis in this study is based on how pairs of testers proceed on a comparative basis through the hiring process. We define the hiring process as a progression through three stages: (1) application, (2) interview, and (3) job offer. Unfavorable treatment occurred where there was differential progress between the two members of a pair during the hiring process.

As noted earlier, the precision of these estimates depends on the levels of unfavorable treatment and the size of the intracluster correlation coefficient in the sample. The higher the intracluster correlation coefficient, other things equal, the higher the variance and the lower the precision of the estimated Anglo-Hispanic difference in treatment. The variance of the estimated difference in treatment was calculated for each of the outcomes. We estimated RHO, the intraclass correlation coefficient, using the estimator as follows:

Provided that cluster sizes are roughly equal, then the standard error of the paired Anglo-Hispanic difference under two-stage cluster sampling, say SE CL, can be estimated using

$$SE_{CL} = SE_{SRS}\sqrt{1 + RHO\,(M - 1)}$$

where M is the mean cluster size and SE SRS is the standard error of the paired difference under simple random sampling.

These standard errors assume that the outcomes obtained by the two members of each matched pair from each employer were independent of each other. This would not be true if, for example, the employer decided to hire one member and not the other only because he could not afford to hire or needed only one new employee. To mitigate this potential bias, testers were instructed to turn down job offers as soon as possible. However, the possibility of some dependence between some tester outcomes remains (e.g., due to employers' limited time for interviewing or to competition between testers).

The intracluster correlation coefficients were small for each of the outcomes, possibly due to successful matching and the narrow range of testers employed (i.e., males between 19 and 24 years old). Alternatively, the small magnitudes might be due to violations of the independence assumption.

Tests of the statistical significance of differences in treatment were done for each of the outcome variables using the standard matched pair t-test. This test was adjusted for cluster sampling using the method of Kish.[4]

Design Limitations

In the hiring audit, we seek to make inferences about a particular kind of discrimination, namely discrimination in the employment of unskilled workers. The incidence of discrimination in the employment process depends upon many factors, including the characteristics of employers, the characteristics of prospective employees, and many aspects of the contexts or situations in which applications for employment, interviews, and hiring take place. Unfortunately, discrimination cannot be measured directly. On the contrary, discrimination is measured as a residual after other "extraneous" factors thought to affect the behavioral outcome (e.g., unfavorable treatment) have been controlled.

The validity of any inference of discrimination depends upon (1) knowing all of the important extraneous variables that affect the outcome and (2) measuring and correctly incorporating in the matching procedure all the important variables that affect the outcome. Because discrimination is always measured as a residual after other determinants of employment outcomes have been controlled, failure to identify, measure, and/or incorporate all determinants of employment outcomes results in biased estimation of the effect of discrimination. Although we have attempted to control job-relevant variables through matching, there may be variables that we did not match that would have affected the hiring outcome. Thus, if we did not match on all important variables, our estimates may be biased because of omitted variables.

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[4] Leslie Kish, Survey Sampling (New York: John Wiley, 1965).

As noted earlier, we determined that newspaper want ads were the only job vacancy universe feasible for this study. However, we realize that most jobs are obtained through personal contacts, direct application, and intermediaries such as employment services. Thus, there may be some bias in relation to generalizing to all similar jobs due to the exclusion of these other potential job vacancy sources. Research suggests that employers who advertise in the newspaper tend to discriminate less than those who hire through personal contact or direct application.[6] Thus, a newspaper want ad sampling frame provides at least the lower limits of unfavorable treatment if it exists.

Fine Analysis

To determine if the INS field offices were satisfactorily implementing the INS Commissioner's policies and procedures to enforce the law, we reviewed a random sample of INS case files of employers who had been fined (sanctioned) for violating the law. We selected a random sample of 300 cases from the total universe of 704 case files that were closed during the period July 1, 1988, to February 28, 1989. The sampling errors for estimates reported in the text are presented in table III.4.

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[6] Harry Holzer, "Informal Job Search and Black Youth Unemployment," The American Economic Review (June 1987);Harry Holzer, "Utilization of Public and Private Job Search Mechanisms: The Experiences of Employers and Employees," U.S. Department of Labor, Secretary's Commission on Workforce Quality and Labor Market Efficiency, Washington, D.C., 1987; and Katherine G. Abraham, "Help Wanted Advertising, Job Vacancies, and Unemployment," Brookings Papers on Economic Activity, Vol. 1 (Washington, D.C.). 1987.

Table III.4: Estimates, Sampling Errors, and 95 Percent Confidence Limits for the Employers' Fine Analysis

Description	Estimate	95 percent confidence limits: Lower	95 percent confidence limits: Upper
Policy for Sanctioning Employers:			
Fines that may not be consistent with INS policy	19 (3%)	11 (2%)	30 (4%)
Fines consistent with INS policy:	683 (97%)	672 (96%)	694 (99%)
Fined for knowingly hiring or continuing to employ unauthorized workers	354	322	386
Employers educated but found with subsequent violations	73	53	93
Employers fined for paperwork violations and found with unauthorized workers	256	231	281
Missing documentation in the case files:			
Reason for reducing the initial fine assessed	378	346	410
Whether INS educated the employer on the law's requirements	188	160	216
Application for notice of intent to fine	383	351	415
Employer agreement to participate in INS' authorized worker program	138	113	163
Whether the fine was collected	84	63	105
The reason the fine was not collected	26	18	36
The final order or settlement agreement	26	17	38
Cases where INS reduced the initial fine amount	415 (59%)	384 (55%)	446 (63%)
INS did not document the reason(s) for the reduction	377 (91%)	362 (87%)	392 (94%)

Legal Analysis of the Comptroller General's Determinations Under the IRCA Termination Provisions

The Immigration Reform and Control Act of 1986[1] calls upon the Comptroller General to make determinations that, depending on their outcome, could trigger expedited congressional procedures leading to the termination of certain provisions of IRCA. Specifically, the employer verification and sanctions section of IRCA could be terminated if the Comptroller General determines that "a widespread pattern of discrimination has resulted against" eligible workers "solely from the implementation of this section." Also, the antidiscrimination section of IRCA could be terminated if the Comptroller General determines either that "no significant discrimination" has resulted from implementation of the employer verification and sanctions section or that the antidiscrimination section "has created an unreasonable burden on employers." This analysis presents GAO's legal interpretation of the scope of these determinations and the criteria that apply to them.

Statutory Background

Employer Verification and Sanctions Section

Section 274A of the Immigration and Nationality Act, as added by IRCA, 8 U.S.C. § 1324a (Supp. IV 1986)—the so-called employer verification and sanctions section of IRCA—makes it unlawful "to hire, or to recruit or refer for a fee, for employment in the United States" any individual without complying with the verification system established by that section. It also prohibits the hiring, recruitment, or referral for a fee of an unauthorized alien while knowing the alien to be unauthorized; however, good faith compliance with the verification system is made a defense to such a violation. Finally, it is made unlawful to knowingly "continue to employ" an unauthorized alien. See section 274A(a)(1)-(3). Section 274A goes on to prescribe documentation and employer verification requirements, penalties for their violation, and enforcement responsibilities to be exercised by the Attorney General.

Section 274A(j)(1) requires the Comptroller General to issue a series of three annual reports, beginning 1 year after enactment of IRCA, which are to describe the results of GAO reviews of the implementation and enforcement of the provisions of section 274A during the preceding year for the purpose of determining if:

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[1] Pub. L. No. 99-603, approved November 6, 1986, 100 Stat. 3359. The Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, approved October 24, 1988, 102 Stat. 2609, made minor wording changes in several provisions of IRCA. These changes have been incorporated in the provisions as discussed in this analysis.

"(A) such provisions have been carried out satisfactorily;

"(B) a pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment; and

"(C) an unnecessary regulatory burden has been created for employers hiring such workers."

The Comptroller General is required to include in each annual report "a specific determination as to whether the implementation of that section has resulted in a pattern of discrimination in employment (against other than unauthorized aliens) on the basis of national origin." See section 274A(j)(2). If the Comptroller General determines that such a pattern of discrimination has resulted, the report shall describe the scope of that determination and may include legislative recommendations to deter or remedy such discrimination. See section 274A(j)(3).

Section 274A(k) requires the Attorney General, acting jointly with the Chairman of the Civil Rights Commission and the Chairman of the Equal Employment Opportunity Commission, to establish a task force to review each annual Comptroller General report. If the report includes a determination by the Comptroller General that a pattern of discrimination exists, the task force is to report to Congress its recommendations for such legislation as may be appropriate to deter or remedy the discrimination. Congressional hearings on the report are to be held on an expedited basis.

Section 274A(l)(1) provides for termination of the employer verification and sanctions section 30 days after receipt of the last annual Comptroller General report under section 274A(j) if:

"(A) the Comptroller General determines, and so reports in such report, that a widespread pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment solely from the implementation of this section; and

"(B) there is enacted, within such period of 30 calendar days, a joint resolution stating in substance that Congress approves the findings of the Comptroller General contained in such report."

Antidiscrimination Section

Section 274B of the Immigration and Nationality Act, as added by IRCA, 8 U.S.C. § 1324b—the so-called antidiscrimination section of IRCA—provides in subsection (a)(1):

"(1) GENERAL RULE.—It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

"(A) because of such individual's national origin, or

"(B) in the case of a citizen or intending citizen . . . because of such individual's citizenship status."[2]

Section 274B goes on to establish processes for investigating and resolving unfair immigration-related employment practice complaints. Among other things, it requires the appointment within the Department of Justice of a Special Counsel to investigate and prosecute such complaints.

Section 274B(k)(1) provides for the termination of the antidiscrimination section of IRCA if the employer verification and sanctions section is terminated as a result of the Comptroller General's determination and congressional action endorsing it pursuant to section 274A(l), described previously. Section 274B(k)(2) describes two additional avenues for termination of the antidiscrimination section as follows:

"(2) The provisions of this section shall terminate 30 calendar days after receipt of the last report required to be transmitted under section 274A(j) if—

"(A) the Comptroller General determines, and so reports in such report that—

"(i) no significant discrimination has resulted against citizens or nationals of the United States or against any eligible workers seeking employment, from the implementation of section 274A, or

"(ii) such section has created an unreasonable burden on employers hiring such workers; and

"(B) there has been enacted, within such period of 30 calendar days, a joint resolution stating in substance that Congress approves the findings of the Comptroller General contained in such report."

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[2] Section 274B makes certain exceptions to the general prohibition against discrimination based on citizenship status, section 274B(a)(2)(C), and also permits an employer to prefer a U.S. citizen or national over an alien if the two are equally qualified, section 274B(a)(4).

In summary, the last of the Comptroller General's three annual reports will initiate a process that could lead to termination of the employer verification and sanctions section of IRCA if the Comptroller General determines "that a widespread pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment solely from the implementation of this section. . . ." See section 274A(l)(1)(A). If the employer verification and sanctions section terminates as a result of such a determination, the antidiscrimination section will cease to apply as well. Section 274B(k)(1). Even if the employer verification and sanctions section does not terminate, the antidiscrimination section may terminate if the Comptroller General determines in his third report either that "no significant discrimination" against eligible workers seeking employment has resulted from implementation of the employer verification and sanctions section or that the antidiscrimination section "has created an unreasonable burden on employers hiring such workers. . . ." See section 274B(k)(2)(A)(i) and (ii).

Widespread Pattern of Discrimination Determination

Scope of Covered Discrimination

In describing the Comptroller General's determination as to discrimination resulting from employer verification and sanctions, section 274A(l)(1)(A) refers to "discrimination" that "has resulted against citizens or nationals of the United States or against eligible workers seeking employment. . . ." It is abundantly clear from this language, other provisions of section 274A and 274B, and the entire context of the statute that the Comptroller General's determination focuses on discrimination in employment. There is no indication that the Comptroller General's determination was intended to look beyond employment discrimination into such areas as discrimination in housing or public accommodations.

The extent of covered employment discrimination also can be ascertained by reading the statute as a whole. Both the employer verification and sanctions provision in section 274A(a) and the antidiscrimination provisions in section 274B(a) apply to hiring, recruitment, referral, and discharging (or, in the case of the sanctions, continuing to employ). The legislative history likewise describes discrimination with exclusive reference to these aspects of employment, with particular emphasis on discrimination in hiring. Given these considerations, we conclude that the Comptroller General's determination embraces only discrimination related to the hiring, recruitment, referral or discharging of employees. It does not include discrimination involving conditions of employment such as wages or promotions.

National Origin Discrimination

While the language of the Comptroller General determination provision in section 274A(l)(1)(A) does not specify what basis or bases of discrimination it covers, discrimination on the basis of national origin clearly is included. Two of the other provisions of section 274A dealing specifically with the Comptroller General's determinations refer expressly to "a pattern of discrimination in employment (against other than unauthorized aliens) on the basis of national origin. . . ." See sections 274A(j)(2) and (k)(2). The conference report on IRCA also observes that the three annual GAO reports are to address "whether a pattern of employment discrimination based on national origins has resulted from employer sanctions."[3] Likewise, the legislative history is replete with expressions of concern that employer sanctions might result in discrimination against "foreign-appearing" persons,[4] particularly Hispanics, Asians, and other minority groups.[5] These concerns fit squarely within the EEOC Guidelines on Discrimination Because of National Origin, for purposes of title VII of the Civil Rights Act, as follows:

> "The Commission defines national origin discrimination broadly as including, but not limited to, the denial of equal employment opportunity because of an individual's, or his or her ancestor's, place of origin; or because an individual has the physical, cultural or linguistic characteristics of a national origin group. . . ."[6]

Thus, national origin discrimination, as so defined, clearly is covered by the Comptroller General's determination.

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[3] H.R. Rep. No. 99-1000, 99th Cong., 2d Sess. at 86 (1986).

[4] Id. at 87.

[5] See, e.g., 131 Cong. Rec. 23320 and 23717 (1985) (remarks of Senator Kennedy); id. at 23718-19 (remarks of Senator Symms); id. at 23720 (remarks of Senator Dixon).

[6] 29 C.F.R. § 1606.1 (1988).

Disparate Treatment Versus Disparate Impact

The executive branch takes the position that the antidiscrimination section of IRCA (section 274B) applies only to "disparate treatment," i.e., intentional discrimination, and does not extend to "disparate impact" or "adverse impact" discrimination, i.e., actions that may be facially nondiscriminatory but have an unintended discriminatory effect on a protected class.[7] Whatever the merits of this position with respect to the antidiscrimination section, there is no basis to draw a distinction between disparate treatment and disparate impact discrimination for purposes of the Comptroller General's determinations under section 274A. As noted previously, the Comptroller General determination provisions were enacted in response to concerns that employer sanctions might result in discrimination against foreign-appearing persons. We have found no evidence to suggest that these generalized concerns turned on the precise form of such discrimination so long as it resulted from implementation of the employer verification and sanctions system. Further, we note that the EEOC Guidelines explicitly cover both disparate treatment and disparate impact.[8] It would be anomalous to conclude that the Comptroller General's determination does not cover national origin discrimination actionable under title VII.

"Alienage" Discrimination

While the Comptroller General's determination clearly addresses national origin discrimination, a more difficult issue is whether it extends to discrimination based on citizenship status, i.e., alienage discrimination. The Supreme Court has recognized a distinction between discrimination based on national origin and discrimination based on "alienage" or citizenship status. See *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86 (1973). This distinction is recognized as well in the antidiscrimination section of IRCA. The caption of section 274B refers to "Discrimination Based on National Origin *or* Citizenship Status" (emphasis supplied) and the substantive prohibitions in section 274B(a)(1) treat national origin and citizenship status as separate categories of prohibited discrimination.

By contrast, none of the four provisions in section 274A dealing with the Comptroller General's reviews and determinations mentions alienage discrimination. Two of these provisions—sections 274A(j)(2) and (k)(2)—refer only to discrimination "on the basis of national origin" while the other two, including the provision dealing specifically with the third-year determination which could trigger expedited congressional repeal of employer sanctions, simply refer to discrimination against "citizens or nationals of the United States or against eligible workers seeking employment. . . ." See sections 274A (j)(1)(B) and (l)(1)(A). It could be argued that the more general language of the latter two provisions is broad enough to include alienage as well as national origin discrimination. In this vein, one could view the absence of a reference to national origin discrimination in these two provisions as suggesting that Congress intended them to cover more than national origin discrimination. Also, it might appear incongruous to exclude from the Comptroller General's determination under section 274A a form of discrimination which is proscribed under section 274B of the same statute, particularly when the proscriptions against alienage discrimination stem from the same concern as the Comptroller General determination provisions—the potential effects of employer sanctions.

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[7] See, e.g., the President's statement on signing IRCA into law, 1986 U.S. Code Cong. & Admin. News 5856-1; preamble to final Justice Department rules on Unfair Immigration-Related Employment Practices, 52 Fed. Reg. 37402-05 (Oct. 6, 1987).

[8] See 29 C.F.R. § 1606.2 (1988).

While these are substantial arguments, we conclude that the weight of the evidence of congressional intent is against including alienage discrimination within the Comptroller General's determination. First, we have found no indication that the four references in section 274A to the Comptroller General's determinations concerning discrimination were intended to have different meanings. Thus, we are inclined to believe that the references to national origin discrimination in the more specific provisions were meant to apply as well to the more general provisions. The conference report tends to support this interpretation since it describes the Comptroller General's determinations only in terms of national origin discrimination.[9] Second, as noted in the conference report,[10] the Comptroller General review and determination provisions of section 274A came from the Senate version of the bill. The Senate-passed bill did not include an antidiscrimination section. In fact, an amendment by Senator Hart very similar to the antidiscrimination provisions ultimately enacted as section 274B, including the restrictions against alienage discrimination, was debated during Senate consideration of the bill and eventually withdrawn.[11] Thus, alienage discrimination was not part of the Senate bill when the Comptroller General determination provisions were formulated. In this regard, Senator Simpson, a principal sponsor of the bill, specifically eschewed an intent to include alienage discrimination within the scope of the Comptroller General's determination:

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[9] H.R. Rep. No. 99-1000, supra note 3, at 86.

[10] Id.

[11] See 131 Cong. Rec. 23726-35 (1985).

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> "Again, we are not talking about discrimination based on alienage. That will be visited at a later part of the day. . . ."[12]

As noted above, an amendment to proscribe alienage discrimination was later considered by the Senate but was not adopted.

In short, it is reasonably clear that the Comptroller General determination provisions as passed by the Senate were not intended to include alienage discrimination. There was no change from the Senate language when these provisions were adopted in conference, nor is there any indication that the conferees intended any change in the interpretation of these provisions. On the contrary, as noted previously, the conferees described the Comptroller General's determinations only in terms of national origin discrimination.

While citizenship discrimination per se is not within the scope of the Comptroller General's determination, discriminatory policies or practices based on a person's citizenship status are covered to the extent that they also constitute national origin discrimination. The overlap between these two forms of discrimination is recognized in the EEOC Guidelines:

> "In those circumstances, where citizenship requirements have the purpose or effect of discriminating against an individual on the basis of national origin, they are prohibited by Title VII."[13]

Indeed, during hearings held on the antidiscrimination provisions of the House version of IRCA,[14] there was a general consensus among the witnesses that alienage discrimination and national origin discrimination are subject to considerable overlap. The hearing record included excerpts from EEOC's compliance manual which illustrated how citizenship requirements could be equated with national origin discrimination on both disparate treatment and disparate impact theories.[15] Finally, national origin discrimination cannot be mitigated on the basis of a claimed relationship to citizenship requirements. For example, an employer who claims to hire only citizens but rejects foreign- appearing applicants on the assumption that they are not citizens clearly is engaged in national origin discrimination.

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[12] Id. at 23718.

[13] 29 C.F.R. § 1606.5(a)(1988).

[14] Joint Hearing before the Subcommittee on Immigration, Refugees, and International Law of the House Judiciary Committee (Serial No. 35) and the Subcommittee on Immigration and Refugee Policy of the Senate Judiciary Committee (Serial No.99-104), 99th Cong., 1st Sess., on Antidiscrimination Provision of H.R. 3080 (Oct. 9, 1985).

Discrimination Resulting "Solely From the Implementation Of" the Employer Verification and Sanctions Section

This element of the Comptroller General determination is designed to identify and isolate discrimination in employment that would not have occurred without IRCA. In this regard, the legislative history contains a number of references to "new" or "increased" discrimination.[16] The only definitive means of satisfying this element of the determination would be to obtain direct evidence from employers that discriminatory actions were, in fact, motivated by the employer verification and sanctions provision. In a more realistic vein, however, we believe that this element can be satisfied by relating covered employment discrimination to areas that are unique to IRCA. For example, INS created its Employment Eligibility Verification Form (I-9) for the sole purpose of implementing the employer verification and sanctions section of IRCA. Consequently, we believe that any discrimination arising from use of the I-9 form can be said to arise "solely from the implementation of" the employer verification and sanctions section. One instance of this would be so-called "documents discrimination," where the documentation and verification requirements of the I-9 form are applied only to foreign appearing persons or are applied in a more onerous manner to such persons, regardless of whether these persons ultimately are hired.

"Widespread Pattern of Discrimination"

There is no guidance in the statutory language concerning this element of the Comptroller General's determination. The only references we have found to it in the legislative history are Senator Kennedy's observations that it requires "a serious pattern of discrimination"[17] and more than "just a few isolated cases of discrimination. . . ."[18] While there is no indication that such discrimination must be pervasive, there is likewise no indication of how serious it must be or how many more than a few isolated cases. We believe that the "widespread pattern of discrimination" element may appropriately consider a variety of quantitative measures. These measures include the number of employers engaged in discriminatory practices, the number of employees or applicants potentially affected, the percentages of employers and of the workforce involved, and the distribution of discriminatory practices by industry type and geographic region.

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[15] Id. at 47-56.

[16] See 131 Cong. Rec. 23717-18, 23720 (1985) (remarks of Senators Kennedy, Simpson, and Dixon).

[17] Id. at 23321.

[18] Id. at 23717.

Determinations Relating to the Antidiscrimination Provisions

As discussed previously, section 274B(k) of IRCA provides for the possible termination of the antidiscrimination section if the Comptroller General determines either that "no significant discrimination" has resulted from implementation of the employer verification and sanctions section or that the antidiscrimination section "has created an unreasonable burden on employers. . . ." The conference report on IRCA contains the following explanation of these determinations:

> "The antidiscrimination provisions would also be repealed in the event of a joint resolution approving a GAO finding that the sanctions had resulted in no significant discrimination, or that the administration of the antidiscrimination provisions had resulted in an unreasonable burden on employers. In this regard, the Confer[ees] also expect that GAO would specifically look into the issue of whether the antidiscrimination mechanism and remedies are being utilized in a manner that is inconsistent with their original purpose (i.e., to guard against employment discrimination based on national origins or citizenship status). [The] Conferees wish to emphasize that the antidiscrimination provision has been included in order to respond to the fears and concerns expressed by many that sanctions will result in employment discrimination based on national origins or citizenship status. Thus, the anti-discrimination provision does not in itself in any way set a precedent for the expansion of other Title VII protections."[10]

During House consideration of the conference report, Representative Rodino elaborated upon the antidiscrimination section (referred to as the "Frank amendment") and the Comptroller General's determinations about it:

> "All conferees clearly agreed that we do not intend this provision to act as a precedent for future efforts to broaden civil rights coverage generally for classes now protected under title VII, nor is it the intent of this Congress that this language be abused by some who would hope to establish, through its administrative procedures, a particularized agenda. In fact, in the statute, we have specifically said that such exploits might jeopardize the entire Frank mechanism.

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[10] H.R. Rep. 99-1000 supra, note 3, at 87-88.

"We clearly do not expect to see harassment suits initiated under this language, nor efforts to extort jobs from small employers through the threat of administrative action. In this regard, we incorporated into the attorneys' fees provisions of the Frank amendment limitations on recovery. We agreed that attorneys' fees should not be awarded unless the losing party's argument 'is without reasonable foundation in fact or law.' This language is intended to frustrate frivolous suits by taking away the incentive to bring them.

"Further, it should be clear that the possible sunset of Frank is tied to the absence of 'significant discrimination' resulting from sanctions. Such a sunset is intended to parallel the expedited sunset contained in the original Kennedy language in the Senate bill. We failed to include this language in our haste to draft the finished product, and that is the reason for this amendment. With the adoption of this amendment, then, both Frank and sanctions will be eligible for sunset by an expedited process which guarantees floor consideration following an appropriate finding by the Comptroller General."[20]

Senator Simpson offered similar comments during Senate consideration of the conference report:

"The antidiscrimination provisions would . . . be repealed in the event of a joint resolution approving a GAO finding that the sanctions have resulted in no significant discrimination or that the administration of the antidiscrimination provisions has resulted in placing an unreasonable burden on employers.

"With this provision we sought to make vividly clear that harassment litigation will not be tolerated. And there are some activist groups in the United States who I think have been off in the wings kind of slavering at the chops, waiting for their opportunity to go find a whole new crew of plaintiffs to begin a whole new exercise against employers in their national efforts. This is wholly discouraged. It will be the subject of the most careful oversight by myself, and by Congressman Rodino.

"In this regard the conferees also expect that GAO would specifically inquire into the issue of whether antidiscrimination mechanisms and remedies are being utilized in a manner that is inconsistent with their original purpose, which is of course to guard against employment discrimination based on national origin or citizenship status.

"The conferees wish to strongly emphasize that the antidiscrimination provision has been included solely in order to respond to the fears and concerns expressed by some that employer sanctions will result in employment discrimination based on national origin or citizenship status. Thus, this is all so very important.

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[20] 132 Cong. Rec. H11148 (daily ed., Oct. 16, 1986).

> "This is a very narrow provision intended to address only employer sanctions, and not to provide this avenue for activist groups and organizations to harass employers with nuisance suits. We specifically address this possibility in the conference report by providing the sunset provision which would be triggered if the Frank amendment were to create an 'unreasonable burden on employers.' I want the Senate to hear that and to be very clear on that point."[21]

Based on the above explanations, section 274B(k)(2) fundamentally calls for a determination of whether the antidiscrimination section is serving a useful purpose, as intended, in addressing employment discrimination or, on the other hand, whether it is merely a vehicle for harassing employers.

Summary of Conclusions

The following is a summary of our conclusions based on the foregoing analysis:

1. The Comptroller General's determination under section 274A(l)(1)(A) as to whether "a widespread pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment solely from the implementation of this section" focuses on discrimination in the hiring, recruitment, or referral for a fee, and discharging of employees or job applicants. It does not include discrimination in areas other than employment, nor does it include discrimination in terms or conditions of employment unrelated to hiring, discharging, recruitment, or referral.

2. The section 274A(l)(1)(A) determination covers national origin discrimination in the form of both disparate treatment and disparate impact.

3. It does not extend to "alienage" discrimination per se, but does include such discrimination if it has the purpose or effect of discriminating on the basis of national origin.

4. Section 274A(l)(1)(A) covers only "new" discrimination that results "solely" from implementation of section 274A. This element can be satisfied by evidence that discrimination was in fact motivated by the employer sanctions section or by evidence of discrimination relating to

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[21] Id. at S16614-15.

actions that are unique to section 274A such as implementation of its documentation and verification requirements (e.g., use of the I-9 form).

5. Whether a "widespread pattern of discrimination" exists for purposes of section 274A(l)(1)(A) depends upon if there is a "serious pattern" and more than "just a few isolated cases of discrimination." This element will take into account quantitative measures for which no precise formula can be applied.

6. The Comptroller General's determinations under section 274B(k)(2) as to if "no significant discrimination" has resulted from implementation of section 274A or if the antidiscrimination provisions of section 274B have "created an unreasonable burden on employers" turn on whether a significant number of frivolous complaints have been filed.

Comments on Draft Legal Analysis

We sent our draft legal analysis for comment to 40 individuals and organizations, including House and Senate staff members, public interest groups, and government entities. About half of the recipients commented. We heard from all the government entities and one congressional staff member—the Chief Counsel, Senate Subcommittee on Immigration and Refugees Affairs.

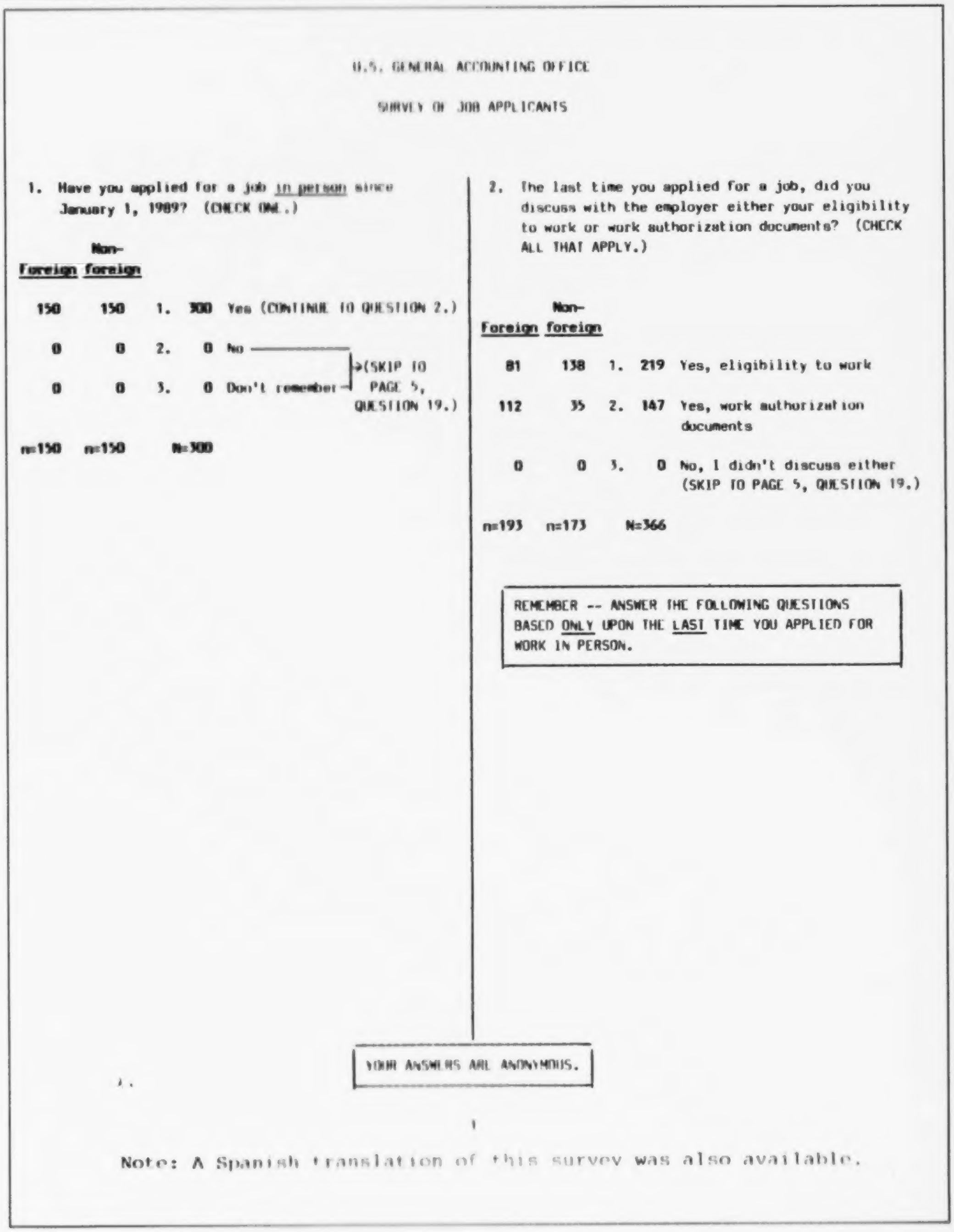
The commenters generally agreed with most aspects of the analysis. However, all but one of the commenters disagreed with our conclusion that only national origin discrimination, as opposed to "alienage" discrimination, is covered by the Comptroller General's determination under section 274A (e)(l)(A). As noted previously, we recognize that this is a close question. It also is a moot point, since our determination that a widespread pattern exists is based on consideration of national origin discrimination alone. At the same time, our report includes our findings concerning IRCA-related citizenship discrimination in order that Congress may make its own judgment about the significance of that discrimination.

The organizations and individuals that disagree with our position that the Comptroller General's determination does not extend to citizenship discrimination are: INS; EEOC; OSC; American Civil Liberties Union; National Council of LaRaza; Center for Immigrant Rights, Inc.; City of New York Commission on Human Rights; American Federation of Labor - Congress of Industrial Organizations; Illinois Commission on Human Rights; Washington Lawyers' Committee for Civil Right; International Ladies Garment Workers Union; Association of the Bar of the City of

New York; American Immigration Lawyers Association; New York State Department of Social Sciences; San Francisco Lawyers Committee for Urban Affairs; American Jewish Committee; U.S. Commission on Civil Rights; Professor Marta Tienda, University of Chicago; and MALDEF.

Appendix V

Survey of Job Applicants



U.S. GENERAL ACCOUNTING OFFICE

SURVEY OF JOB APPLICANTS

1. Have you applied for a job in person since January 1, 1989? (CHECK ONE.)

Foreign	Non-foreign			
150	150	1.	300	Yes (CONTINUE TO QUESTION 2.)
0	0	2.	0	No → (SKIP TO PAGE 5, QUESTION 19.)
0	0	3.	0	Don't remember → (SKIP TO PAGE 5, QUESTION 19.)
n=150	n=150		N=300	

2. The last time you applied for a job, did you discuss with the employer either your eligibility to work or work authorization documents? (CHECK ALL THAT APPLY.)

Foreign	Non-foreign			
81	138	1.	219	Yes, eligibility to work
112	35	2.	147	Yes, work authorization documents
0	0	3.	0	No, I didn't discuss either (SKIP TO PAGE 5, QUESTION 19.)
n=193	n=173		N=366	

REMEMBER -- ANSWER THE FOLLOWING QUESTIONS BASED ONLY UPON THE LAST TIME YOU APPLIED FOR WORK IN PERSON.

YOUR ANSWERS ARE ANONYMOUS.

1

Note: A Spanish translation of this survey was also available.

3. In which of the following types of organizations was the job you were seeking? (CHECK ONE.)

Foreign	Non-foreign			
2	16	1.	18	Communications and utilities
11	12	2.	23	Construction
1	2	3.	3	Farming (Agriculture)
3	20	4.	23	Finance, insurance, or real estate
15	2	5.	17	Food processing
0	1	6.	1	Forestry and fishing
8	4	7.	12	Garment (Apparel)
1	1	8.	2	Non-durable manufacturing other than garment
3	2	9.	5	Durable manufacturing
0	0	10.	0	Mining
45	5	11.	50	Hotel or Restaurant
5	7	12.	12	Retail trade other than restaurant
2	8	13.	10	Services other than hotel
4	7	14.	11	Tranportation
3	5	15.	8	Wholesale trade
40	44	16.	84	Other (specify) __________
7	14		21	**Blank**
n=150	n=150		N=300	

4. How did you hear about the job? (CHECK ONE.)

Foreign	Non-foreign			
82	44	1.	126	Friends, acquaintences, relatives
18	50	2.	68	Newspapers
5	2	3.	7	Sign in window
9	3	4.	12	State employment agency
24	14	5.	38	Walk-in
5	17	6.	22	Other (specify) __________
7	20		27	**Blank**
n=150	n=150		N=300	

5. Were you referred to the job by the state employment agency? (CHECK ONE.)

Foreign	Non-foreign			
16	6	1.	22	Yes
116	144	2.	260	No
6	0	3.	6	Don't know
12	0		12	**Blank**
n=150	n=150		N=300	

6. Before you visited the employer, did you believe there was a specific job vacancy? (CHECK ONE.)

Foreign	Non-foreign			
61	76	1.	137	Definitely yes
57	46	2.	103	Probably yes
10	16	3.	26	Undecided
7	6	4.	13	Probably no
6	1	5.	7	Definitely no
5	5	6.	10	No basis to judge
4	0		4	**Blank**
n=150	n=150		N=300	

YOUR ANSWERS ARE ANONYMOUS.

7. When you applied, did the employer tell you that a specific job was available? (CHECK ONE.)

Foreign	Non-foreign			
82	97	1.	179	Definitely yes
30	23	2.	53	Probably yes
15	16	3.	31	Undecided
4	7	4.	11	Probably no
10	5	5.	15	Definitely no
6	1	6.	7	No basis to judge
3	1		4	Blank
n=150	n=150		N=300	

8. Were you asked if you were eligible to work in the United States? (CHECK ONE.)

Foreign	Non-foreign			
127	83	1.	210	Yes
16	66	2.	82	No
6	1	3.	7	Don't remember
1	0		1	Blank
n=150	n=150		N=300	

9. Were you asked to show any documents to prove that you are authorized to work in the United States? (CHECK ONE.)

Foreign	Non-foreign				
144	66	1.	210	Yes (CONTINUE TO QUESTION 10.)	
6	83	2.	89	No	→(SKIP TO QUESTION 16.)
0	1	3.	1	Don't remember	
n=150	n=150		N=300		

10. When were you asked to show the documents? (CHECK ONE.)

Foreign	Non-foreign			
34	17	1.	56	Before the interview
70	18	2.	88	During the interview
7	8	3.	15	After the interview, but before I was offered a job
14	10	4.	24	After I was offered a job, but before I was hired
10	12	5.	22	After I was hired
4	1	6.	5	Don't remember
n=144	n=66		N=210	

11. Were you able to show the employer any ducuments? (CHECK ONE.)

Foreign	Non-foreign			
141	64	1.	205	Yes (SKIP TO QUESTION 13.)
2	2	2.	4	No (CONTINUE TO QUESTION 12.)
1	0	3.	1	Don't remember (SKIP TO QUESTION 16.)
n=144	n=66		N=210	

YOUR ANSWERS ARE ANONYMOUS.

12. Why weren't you able to show any documents? (CHECK ALL THAT APPLY.)

Foreign	Non-foreign			
1	0	1.	1	I didn't have documents
0	0	2.	0	I didn't have the documents with me
0	1	3.	1	The employer asked for specific document(s) that I didn't have
0	0	4.	0	I wasn't given time to acquire them
1	1	5.	2	Other (specify) ________
n=2	n=2		N=4	

IF YOU ANSWERED QUESTION 12, GO TO QUESTION 16.

13. What document(s) did you show? (CHECK ALL THAT APPLY.)

Foreign	Non-foreign			
50	53	1.	103	Driver's license
103	58	2.	161	Social Security Card
3	7	3.	10	Passport
9	19	4.	28	Birth Certificate
127	1	5.	128	Immigration document (for example, "green card")
14	6	6.	20	Other (specify) ________
1	0	7.	1	Don't remember
n=307	n=144		N=451	

14. Did the employer accept the document(s)? (CHECK ONE.)

Foreign	Non-foreign			
138	64	1.	202	Yes (SKIP TO QUESTION 16.)
2	0	2.	2	No (CONTINUE TO QUESTION 15.)
n=140	n=64		N=204	

15. Why didn't the employer accept the document(s)? (CHECK ONE.)

Foreign	Non-foreign			
0	0	1.	0	The employer wanted another specific type of document(s)
1	0	2.	1	The employer didn't believe document(s) were authentic
1	0	3.	1	Other (specify) ________
0	0	4.	0	Don't know
n=2	n=0		N=2	

16. Were you offered the job? (CHECK ONE.)

Foreign	Non-foreign			
104	60	1.	164	Yes
33	88	2.	121	No
13	2		15	Blank
n=150	n=150		N=300	

17. Were you asked to complete an I-9 form? (AN I-9 FORM IS SHOWN ON PAGE 6.) (CHECK ONE.)

Foreign	Non-foreign				
98	54	1.	152	Yes	
31	85	2.	116	No	→(SKIP TO QUESTION 19.)
16	8	3.	24	Don't remember	
5	3		8	Blank	
n=150	n=150		N=300		

18. When did you complete the I-9 form? (CHECK ONE.)

Foreign	Non-foreign			
74	31	1.	105	Before I was hired
18	20	2.	38	After I was hired
6	3		9	Blank
n=98	n=54		N=152	

19. Were you born in the United States? (CHECK ONE.)

Foreign	Non-foreign			
0	145	1.	145	Yes
146	4	2.	150	No
4	1		5	Blank
n=150	n=150		N=300	

20. Which of the following best describes your current citizenship status? (CHECK ONE.)

Foreign	Non-foreign			
0	149	1.	149	Citizen or National of the United States
21	0	2.	21	Permanent resident alien
127	0	3.	127	Temporary resident alien
1	1	4.	2	Other (specify) ________
1	0		1	Blank
n=150	n=150		N=300	

21. Which of the following best describes your ethnic/racial background? (CHECK ONE.)

Foreign	Non-foreign			
3	3	1.	6	Asian
14	31	2.	45	Black
130	7	3.	137	Hispanic/Latino
0	104	4.	104	White (non-Hispanic)
0	3	5.	3	Native American (North American Indian)
1	1	6.	2	Other (specify) ______
2	1		3	Blank
n=150	n=150		N 300	

22. Are you male or female? (CHECK ONE.)

Foreign	Non-foreign			
90	84	1.	174	Male
59	65	2.	124	Female
1	1		2	Blank
n=150	n=150		N=300	

23. Do you speak English with a foreign accent? (CHECK ONE.)

Foreign	Non-foreign			
40	0	1.	40	I don't speak English
45	0	2.	45	I speak English with a heavy foreign accent
65	0	3.	65	I speak English with a slight foreign accent
0	150	4.	150	I speak English with no foreign accent
0	0	5.	0	No basis to judge
n=150	n=150		N=300	

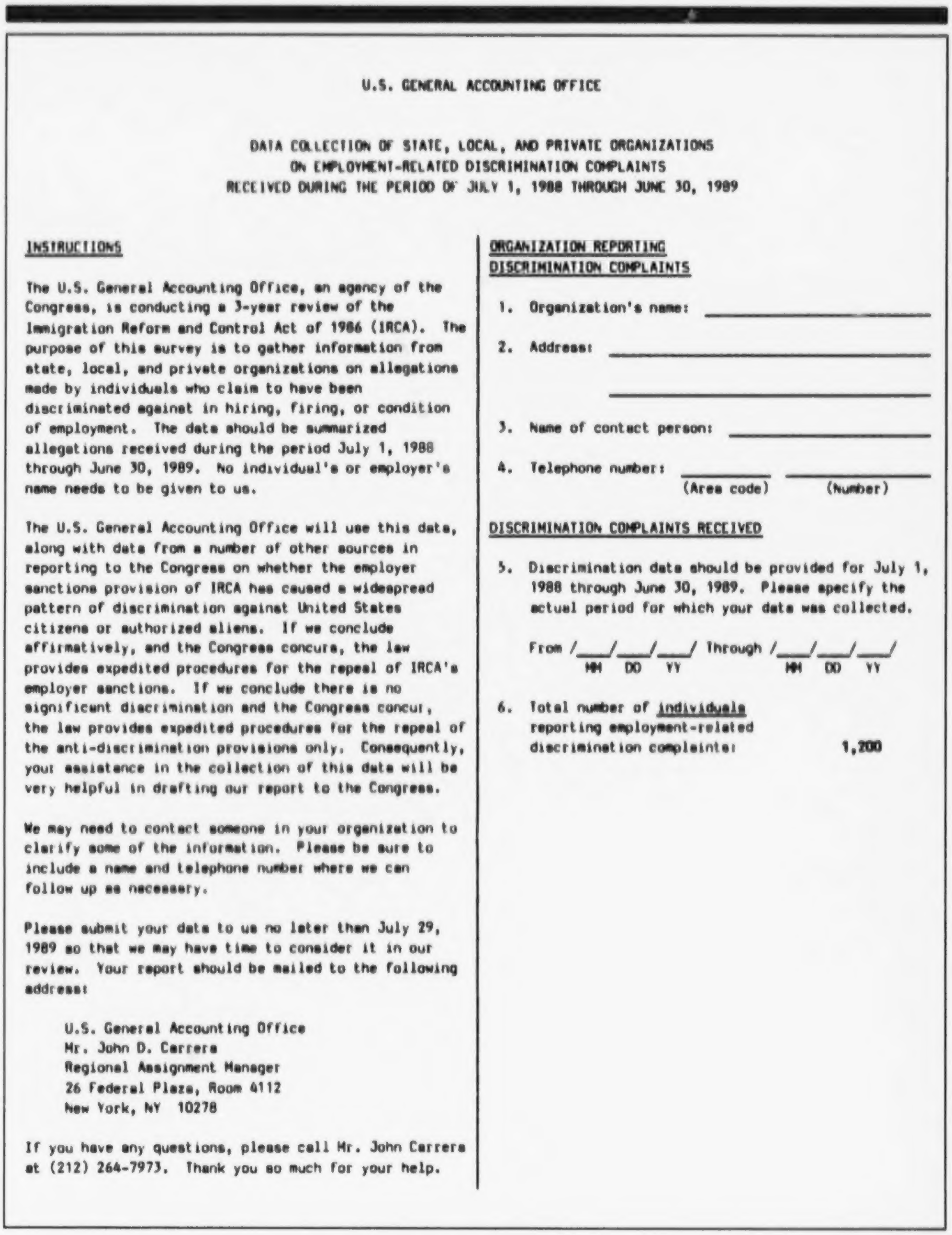
24. If you have any comments on this survey, or on your experiences in seeking a job, please use the space provided below.

This concludes our survey. Thank you for your help.

YOUR ANSWERS ARE ANONYMOUS.

183565
GGD/MS/7-89

Data Collection of State, Local, and Private Organizations on Employment-Related Discrimination Complaints



U.S. GENERAL ACCOUNTING OFFICE

DATA COLLECTION OF STATE, LOCAL, AND PRIVATE ORGANIZATIONS
ON EMPLOYMENT-RELATED DISCRIMINATION COMPLAINTS
RECEIVED DURING THE PERIOD OF JULY 1, 1988 THROUGH JUNE 30, 1989

INSTRUCTIONS

The U.S. General Accounting Office, an agency of the Congress, is conducting a 3-year review of the Immigration Reform and Control Act of 1986 (IRCA). The purpose of this survey is to gather information from state, local, and private organizations on allegations made by individuals who claim to have been discriminated against in hiring, firing, or condition of employment. The data should be summarized allegations received during the period July 1, 1988 through June 30, 1989. No individual's or employer's name needs to be given to us.

The U.S. General Accounting Office will use this data, along with data from a number of other sources in reporting to the Congress on whether the employer sanctions provision of IRCA has caused a widespread pattern of discrimination against United States citizens or authorized aliens. If we conclude affirmatively, and the Congress concurs, the law provides expedited procedures for the repeal of IRCA's employer sanctions. If we conclude there is no significant discrimination and the Congress concur, the law provides expedited procedures for the repeal of the anti-discrimination provisions only. Consequently, your assistance in the collection of this data will be very helpful in drafting our report to the Congress.

We may need to contact someone in your organization to clarify some of the information. Please be sure to include a name and telephone number where we can follow up as necessary.

Please submit your data to us no later than July 29, 1989 so that we may have time to consider it in our review. Your report should be mailed to the following address:

U.S. General Accounting Office
Mr. John D. Carrera
Regional Assignment Manager
26 Federal Plaza, Room 4112
New York, NY 10278

If you have any questions, please call Mr. John Carrera at (212) 264-7973. Thank you so much for your help.

ORGANIZATION REPORTING
DISCRIMINATION COMPLAINTS

1. Organization's name: ____________________
2. Address: ____________________
   ____
3. Name of contact person: ____________________
4. Telephone number: ________ (Area code) ____________ (Number)

DISCRIMINATION COMPLAINTS RECEIVED

5. Discrimination data should be provided for July 1, 1988 through June 30, 1989. Please specify the actual period for which your data was collected.

   From /___/___/___/ Through /___/___/___/
   MM DD YY MM DD YY

6. Total number of individuals reporting employment-related discrimination complaints: 1,200

7. Please provide us with a count of the types of discrimination issues alleged by the individual. While individuals may allege more than one issue, we can only count one for each individual, so we would like you to identify the primary issue. If an individual alleges hiring or firing as an issue at all, please consider it the primary issue. If hiring or firing is not mentioned as an issue, consider it under working conditions and indicate the first allegation mentioned. (PLEASE USE ONLY ONE ISSUE PER INDIVIDUAL.)

	INDIVIDUAL'S STATUS				
DISCRIMINATION ISSUE	United States citizen (1)	Authorized alien (2)	Un-authorized alien (3)	Status unknown (4)	TOTAL (5)
1. Refusal to hire	33	190	37	0	260
2. Fired	10	251	111	0	372
3. Working conditions					
A. Wage reduction or extension of work hours	1	215	62	15	293
B. "Kickback" payment to employer to get or keep a job	0	5	1	0	6
C. Other working conditions (Please specify) ________	4	167	36	0	207
D. TOTAL OF LINES 3A, 3B, AND 3C	5	387	99	15	506
4. Unable to determine	1	36	12	13	62
5. TOTAL (ADD LINES 1, 2, 3D, and 4)	49	864	259	28	1,200

THE NUMBER IN "TOTAL COLUMN, LINE 5" SHOULD EQUAL TOTAL INDIVIDUALS IN QUESTION 6.

8. Individuals may have report various types of employer actions. Please use the first action they mentioned, and provide us with the number of individuals who said the employers did any of the following. If data is not available, please write "N/A" for not available.

	INDIVIDUAL'S STATUS				
WHAT THE EMPLOYER DID . . .	United States citizen (1)	Authorized alien (2)	Un-authorized alien (3)	Status unknown (4)	TOTAL (5)
1. Required U.S. citizenship	5	25	11	0	41
2. Required a Permanent Resident Card (green card)	0	57	8	0	65
3. Did not accept a valid work authorization document	24	272	3	0	299
4. Retaliated because alien became legalized	0	147	0	0	147
5. Retaliated because alien asked for employer's assistance with legalization application	0	10	12	0	22
6. Other employer action (please specify) ______________	19	322	216	15	572
7. Unable to determine	1	31	9	13	54
8. TOTAL (ADD LINES 1, 2, 3, 4, 5, 6, AND 7).	49	864	259	28	1,200

THE NUMBER IN "TOTAL COLUMN, LINE 8" SHOULD EQUAL TOTAL INDIVIDUALS IN QUESTION 6.

9. For the individuals indentified in Question 6, please indicate their immigration status.

	Number of individuals
1. Authorized workers	913
2. Unauthorized workers:	
A. Hired BEFORE November 7, 1986	121 [a]
B. Hired AFTER November 6, 1986	115 [a]
C. TOTAL unauthorized workers (ADD LINES 2A and 2B)	259
3. Unknown	28
4. TOTAL OF LINES 1, 2C, AND 3	1,200

10. Provide the number of authorized workers reported in QUESTION 9, LINE 1 for all ethnic/race categories below.

ETHNIC/RACE CATEGORY	United States citizen (1)	Authorized alien (2)	TOTAL (3)	
1. Asian and pacific islanders	0	12	12	
2. Blacks (non-Hispanics)	1	34	35	
3. Hispanics	38	724	762	
4. White (non-Hispanics)	3	10	13	
5. Other (specify) ________________	0	2	2	
6. Unknown	0	4	89	[b]
7. TOTAL (ADD LINES 1, 2, 3, 4, 5, AND 6)	42	786	913	[c]

THE NUMBER IN THE "TOTAL COLUMN, LINE 7" SHOULD EQUAL THE TOTAL NUMBER OF AUTHORIZED WORKERS IN QUESTION 9, line 1.

---

[a] Total for 12 organizations; data not available for 2 organizations.
[b] Total for 13 organizations; data not available for 1 organizaion.
[c] Because of missing data, computation of total is only for the column and not for the row.

11. Of the authorized workers (as stated in QUESTION 9, LINE 1), how many were:

	Number of individuals
1. United States citizens	49
A. Number of U.S. citizens that were Puerto Rican	18 [d]
2. Permanent residents (green card)	52
3. Temporary residents	508
4. Asylees/Refugees	21
5. Other legal status (please specify) ________	237
6. Legal status category unknown	46
7. TOTAL OF LINES 1, 2, 3, 4, 5, AND 6.	913

12. According to the Equal Employment Opportunity Commission (EEOC), a national origin complaint is related to the employer sanctions provisions of IRCA if the employer:

1. asked only individuals of a particular national origin, or individuals who "looked foreign", for verification of their legal authorization for employment;
2. scrutinized more closely, or refused to accept, the documents submitted by individuals of a particular national origin to prove their identity or authorization for employment;
3. took any other action that was motivated by the employer's concerns about complying with the new immigration law; or
4. had citizenship requirements or preferences when there is no other federal law, regulation or contractual arrangement requiring him to do so.

Of the complaints received from authorized workers (as stated in QUESTION 9, LINE 1), how many has your organization identified as being employer sanctions-related using the EEOC criteria? (IF THE INFORMATION IS NOT AVAILABLE, ENTER "N/A".)

Number of complaints: 567

---

[d] Total for 11 organizations; data not available for 3 organizations.

13. OPTIONAL NARRATIVE: If you have comments or additional information that you feel may be useful to the General Accounting Office, please provide them below. Attach additional pages as needed.

Thank you for your assistance.

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